



Sent by e-mail to:
John McDowell, john.mcdowell@countyofnapa.org

July 21, 2021

Mr. John McDowell
Napa County Airport Land Use Commission Staff
Napa County Planning, Building and Environmental Services Department
1195 Third St – Suite 210
Napa, CA 94559

Subject: City of American Canyon Intent to Overrule Napa County Airport Land Use Commission Determination; Oat Hill Multi-Family Residential Project (ALUC Case #P21-00056-ALUC)

Dear Mr. McDowell:

Attached for your review and comment is Resolution No. 2021-52, passed unanimously by the City Council of the City of American Canyon at their meeting on July 20, 2021 and titled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON NOTIFYING THE NAPA COUNTY AIRPORT LAND USE COMMISSION AND THE STATE DIVISION OF AERONAUTICS OF THE CITY'S INTENTION TO FIND THAT THE OAT HILL MULTI-FAMILY RESIDENTIAL PROJECT IS CONSISTENT WITH THE PURPOSES OF THE STATE AERONAUTICS ACT AND TO OVERRULE THE NAPA COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE OAT HILL MULTI-FAMILY RESIDENTIAL PROJECT IS INCONSISTENT WITH THE NAPA COUNTY AIRPORT LAND USE COMPATIBILITY PLAN.

Pursuant to California Public Utilities Code (PUC) Section 21676 and included in this Resolution are statements of fact about the project and draft findings that the Project is consistent with the purposes of the State Aeronautics Act, PUC Section 21670, and in support of the Intent to Overrule the Napa County Airport Land Use Commission (ALUC) determination of inconsistency.

A copy of the City's Staff Report on the Subject action is also attached to this letter and a link to all the referenced documents in the record can be found at the following web link:

<https://d2kboa27fdvtw.cloudfront.net/americancaanyon/ced5eeec459f137d8c85f5eae3954b4a0.pdf>

If you have any questions about this Project or the City's Resolution, please feel free to contact me.



Sincerely,

A handwritten signature in blue ink, appearing to read "W He". The signature is stylized with a long horizontal stroke above the letters.

William He, AICP
Associate Planner, Community Development Department

Attachments: Resolution No. 2021-52 of the City Council, City of American Canyon
Staff Report Business Item Number 18, City Council Agenda, July 20, 2021

EC: Amy Choi, Caltrans Aeronautics Division Chief
Matthew Friedman, Caltrans Aeronautics Office of Planning
Rick Hess, RH Hess Development Co.
Brent Cooper, AICP, Community Development Director

RESOLUTION NO. 2021-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON NOTIFYING THE NAPA COUNTY AIRPORT LAND USE COMMISSION AND THE STATE DIVISION OF AERONAUTICS OF THE CITY'S INTENTION TO FIND THAT THE OAT HILL MULTI-FAMILY RESIDENTIAL PROJECT IS CONSISTENT WITH THE PURPOSES OF THE STATE AERONAUTICS ACT AND TO OVERRULE THE NAPA COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE OAT HILL MULTI-FAMILY RESIDENTIAL PROJECT IS INCONSISTENT WITH THE NAPA COUNTY AIRPORT LAND USE COMPATIBILITY PLAN

WHEREAS, an application was filed by RH Hess Development (the Applicant) with respect to the property (the Property) located at Assessor Parcel Numbers 058-380-008 and 058-320-001 in the Oat Hill area of the City of American Canyon;

WHEREAS, the Property is designated Industrial with Specialty Commercial overlay and Residential Estate, and is located within the Light Industrial with Specialty Commercial overlay and Residential Estate zoning districts;

WHEREAS, the Applicant proposes a multi-family residential project that would consist of 291 multi-family dwelling units and associated amenities and parking on approximately 21.8 acres, divided into two parcels (Parcel A and Parcel B), which require the following approvals from the City (the Project):

- The Oat Hill Multi-Family Residential Mitigated Negative Declaration, pursuant to the California Environmental Quality Act (CEQA);
- A General Plan Amendment on the 13.6-acre Oat Hill Parcel A from Industrial with a Specialty Commercial (CS) overlay and Estate Residential (RE) to High Density Residential (RH-1) (APN 058-380-008 and portion of APN 058-320-001);
- A General Plan Amendment on the 7.2-acre Oat Hill Parcel B from Estate Density Residential to Medium Density Residential (portion of APN 058-320-001);
- A Zone Change on the 13.6-acre Oat Hill Parcel A from Light Industrial with a Specialty Commercial (LI:CS) overlay and Estate Residential (RE) to High Density Residential (APN 058-380-008 and portion of APN 058-320-001);
- A Zone Change on the 7.2-acre Oat Hill Parcel B from Estate Density Residential to Medium Density Residential (RM) (portion of APN 058-320-001);
- A Tentative Subdivision Map for 206 condominium residential units on the 13.6-acre Oat Hill Parcel A (APN 058-380-008 and portion of APN 058-320-001);
- A Tentative Subdivision Map for 85 condominium residential units on the 7.2-acre Oat Hill Parcel B (portion of APN 058-320-001);
- A Design Permit for 206 condominium residential units on the 13.6-acre Oat Hill Parcel A (APN 058-380-008 and portion of APN 058-320-001); and
- A Design Permit for 85 condominium residential units on the 7.2-acre Oat Hill Parcel B (portion of APN 058-320-001);

WHEREAS, a public hearing was held by the City Planning Commission on March 25, 2021. A notice of the time, place, and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* (the Ralph M. Brown Act). Evidence, both written and oral, was presented to and considered by the Planning Commission at the public hearing;

WHEREAS, the Planning Commission adopted Resolution Nos. 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-10, 2021-11, and 2021-12 by a majority vote (4 ayes, 0 noes) recommending City Council approve the Project;

WHEREAS, due to the proposed amendments to the City General Plan and zoning regulations, California Public Utilities Code Section 21676(b) requires the City to refer the Project to the Napa County Airport Land Use Commission (ALUC) for a determination of the Project's consistency with the Napa County Airport Land Use Compatibility Plan (ALUCP);

WHEREAS, on March 26, 2021, the City referred the Project to the ALUC;

WHEREAS, on June 23, 2021, the ALUC voted (6 ayes, 0 noes, 1 absent) finding the Project inconsistent with the ALUCP;

WHEREAS, pursuant to California Public Utilities Code Section 21670 and 21676, the City Council may, after a public hearing, propose to overrule the ALUC by a two-thirds vote of the City Council, if it makes specific findings that the Project is consistent with California Public Utilities Code Section 21670, the purpose of which is to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

WHEREAS, a public hearing was held by the City Council on July 20, 2021. A notice of the time, place, and purpose of the hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to and considered by the City Council at the public hearing.

NOW, THEREFORE, the City Council of the City of American Canyon resolves as follows:

Section 1: The ALUC failed to act in a timely manner as required by State law, and the City Councils finds the Project consistent with the ALUCP by law.

Findings in Support

The Project was referred to the ALUC on March 26, 2021. Pursuant to PUC Section 21676(d) and ALUCP Policy 1.4.4, the ALUC was required to conduct a hearing and make a consistency determination within 60 days of the referral or the Project would be deemed consistent with the ALUCP, by law. The ALUC had all the necessary information for its review of the Project since at least February 2021, when the City provided notice of completion of the Initial Study/Mitigated Negative Declaration prepared for the Project. The City further provided supplemental information on May 6 and May 7, 2021, in response to the ALUC's April 23, 2021 letter. The ALUC therefore had until May 25, 2021, to complete its consistency review, which it failed to do. The Project is therefore consistent with the ALUCP by law.

Section 2: The City Council finds the Project is consistent with the legislative purpose set forth in California Public Utilities Code Section 21670(a)(2) of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses. The City Council further finds that the ALUC's determination that the Project is inconsistent with the ALUCP is not based on substantial evidence that was introduced, commented on, or identified in support of the inconsistency finding.

Findings in Support

A. **Noise.** The residential land use under the proposed Project is consistent with and exceeds the federal and State aircraft noise standards, as well as those of the ALUCP.

1. The Project is located approximately 1.4 miles outside of the 55 dBA CNEL aircraft noise contours in the ALUCP. The noise analysis in the ALUCP was prepared by Shutt Moen Associates, dated December 15, 1999 based on 1988/89 activity levels from the Airport Master Plan and future projections for 2008. The 2008 projections show 315 based aircraft, annual aircraft operations at 210,000 and 575 average day aircraft operations. By contrast, the Federal Aviation Administration (FAA) Terminal Area Forecast¹ for Napa County Airport for 2045 indicates 196 based aircraft, 53,109 annual operations and 145 average day operations. The ALUCP airport activity information used for purposes of the ALUCP noise analysis is four times higher than the longest-term official FAA forecast for Napa County Airport and does not account for updated airport operations.

2. An Environmental Noise Assessment of the Project was completed by Saxelby Acoustics (Saxelby) on September 10, 2020 as part of the Mitigated Negative Declaration prepared for the Project. Saxelby conducted a complete noise analysis, including noise monitoring on the Project site, and found that the Project site is approximately 1.8 miles from the Napa County Airport and well outside the 65 dB CNEL noise contour. Further, 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. The ALUCP classifies multi-family residential land uses as "clearly acceptable" within or below the 50 to 55 dBA CNEL level (ALUCP Table 2-1, Noise Compatibility Guidelines). The Project therefore meets the relevant noise standards. Further, pursuant to ALUCP Figure 5C (Airport Impact Areas, Napa County Airport), the Project is located outside the "common traffic pattern." Therefore, potential noise impacts to residents located outside of residences is best reflected under the ALUCP's noise contours, as the Project will not be subject to routine, everyday noise occurrences. The Project is located outside of the 65, 60, and 55 dB CNEL contours for Napa County Airport and, therefore, Project residents will not be subject to excessive noise impacts. The City also has included a condition of approval for the Project that requires a buyer awareness notification of the Napa County Airport and the potential for aircraft overflight and related single-event aircraft noise.

3. Single event aircraft noise is a supplemental noise metric for which a federal or State standard does not exist, and it is not a required metric for purposes of consistency with the State Aeronautics Act. However, the ALUC found the Project inconsistent because "it relies solely on the CNEL contours and does not consider potential overflight noise impacts relating to the site's conditions, terrain and elevation relative to flight patterns." CNEL noise contours are created by assessing flight paths and their regular

¹ Federal Aviation Administration, Terminal Area Forecast, 2020, https://www.faa.gov/data_research/aviation/taf/ accessed for Napa County Airport (APC) on July 7, 2021.

utilization that make up all the activity around the airport, including all the single event levels of aircraft noise. CNEL then adds time-of-day penalties for evening and nighttime operations to account for the potential activity and sleep disturbance, which can occur when evening and nighttime ambient noise levels are lower than during the day (one evening aircraft operation is the equivalent of three operations or about 5 dB penalty, and one nighttime operation is the equivalent of ten operations or about 10 dB penalty). It is for this reason that both Federal Aviation Administration (FAA) and the State noise standards (PUC 21669) recognize 65 dB CNEL as the definitive and comprehensive noise standard for residential land uses near public airports like Napa County Airport². Figure 5C (Airport Impact Areas, Napa County Airport) of the ALUCP depicts “projected noise contours, overflight areas, flight patterns, and approach surfaces” in the airport vicinity. The Project is located one-half mile south of and 1.4 miles east of the outer boundaries of the depicted Airport Impact Areas, including the 65, 60, and 55 dB CNEL contours and the “common traffic pattern.”

4. Recent noise analysis prepared by the County for its Terminal Area Redevelopment of the Napa County Airport project (Initial Study and Mitigated Negative Declaration dated August 2020) shows that the 65 dB CNEL noise contour is entirely contained within existing airport property. This study provides an FAA-approved 20-year forecast of total aircraft operations and the fleet of aircraft expected to use the Napa County Airport during the 20-year forecast period to 2038. The Project is located approximately 1.6 miles from the nearest point of the 65 dB CNEL noise contours in this most recent study of airport community noise impacts. The County did not independently study or mention single event noise analysis or any other alternative noise metric to CNEL in its environmental analysis for the Terminal Area Redevelopment project.

5. Accordingly, the proposed Project is consistent with and far exceeds the federal and State aircraft noise standards, including those of the ALUCP, as the Project is well-outside the 55, 60, and 65 dB CNEL contour lines and will be constructed in accordance with California building regulations, which require that interior noise levels attributable to exterior sources not exceed 45 dB CNEL. The Project will not be subject to excessive noise, in accordance with the State Aeronautics Act.

B. **Safety.** The residential land uses under the proposed Project are consistent with the safety standards of the ALUCP for those portions within Zone E and the Caltrans Handbook definition of Zone D, the “Traffic Pattern Zone.”

1. The 85 residential units planned for Parcel B are located within ALUCP Zone E and meet all ALUCP safety requirements. The ALUCP indicates that the “risk of accident is very low” in Zone E (Table 3-1). Residential Uses are permitted in Zone E under the ALUCP (Table 3-2).

2. Of the 206 units planned for Parcel A, 155 units are located within ALUCP Zone E and meet all the ALUCP safety requirements, as provided above. The remaining 51 units are located within ALUCP Zone D. A conflict exists between the dimensions and allowable uses for ALUCP safety Zone D and the Caltrans Handbook Zone 6, the latter of which were establish pursuant to State law (PUC Section 21674.5).

² Federal Aviation Administration, Report to Congress, FAA Reauthorization Act of 2018 (Pub. L. 115-254) Section 188 and Section 173, April 14, 2020 regarding the study of alternative metrics including single-event noise metrics and current 65 DNL and 65 CNEL noise standards.

a. Both ALUCP Zone D and Caltrans Handbook Zone 6 are identified as encompassing the Airport's "traffic pattern"; however, the lateral dimensions of each respective zone are significantly different. The Handbook Zone 6 lateral dimension is 6,000 feet from the runway centerline. The ALUCP Zone D is located 10,000 feet from the runway centerline, with the stated reason for this dimension based on the defunct airline training program that was previously based at the Airport but that no longer exists (ALUCP p. 5-7). The ALUCP Zone D is further, and incorrectly, based on 14 CFR Part 77 imaginary surfaces (compare ALUCP Figure 3A and 5D). 14 Part 77 surfaces are created for purposes of identifying structures that should be studied by the FAA in the vicinity of airports, and are not intended to identify relative exposure to documented safety risks around airports. The FAA advises that pilots fly the rectangular traffic pattern within an area one-half mile to one mile (approximately 2,600 to 5,280 feet) laterally from the runway centerline, which creates the basis for the Handbook traffic pattern Zone 6. The Caltrans Handbook indicates that there is a "low" level of risk in Zone 6. The proposed project is outside of the Handbook Zone 6 by approximately 4,200 feet.

b. Handbook Zone 6 allows residential uses with no limit on maximum residential density due to the low accident risk, particularly on the "downwind" leg of the traffic pattern where aircraft are flying at 1,000 to 1,500 feet above airport elevation and parallel to the runway centerline. ALUCP Zone D prohibits residential uses and is inconsistent with Handbook Zone 6. The Caltrans Handbook does not provide any restrictions for uses outside of Handbook Zone 6, where the Project is located.

3. Whether the Project would result in a hazard to air navigation is a determination for the FAA, not the ALUC. However, even though Notice of the Project has been filed with the FAA, the Project may be considered exempt from the notice requirement because it is shielded by existing structures of a permanent and substantial nature and by natural terrain of equal or greater height and terrain (14 CFR Part 77.9(e)(1)). The existing water tank on Oat Hill, as well as the surrounding terrain are taller than the proposed height of the tallest structures associated with the Project. The top elevation of the existing water tank is approximately 308 feet above mean sea level, with an obstruction lighted antenna on top that extends an additional 30 feet. The terrain at the base of the tank is approximately 283 feet above mean sea level. The top of the proposed tallest structures associated with the Project are 281 feet above sea level.

4. The FAA's Determinations of No Hazard to Air Navigation for Oat Hill Residential Project development structures are the only source of authoritative, aviation safety findings regarding the Project. The FAA is conducting an aeronautical study (49 U.S.C. §44718 and 14 CFR Part 77) and its Determinations are pending. A FAA determination of "No Hazard" would be a condition of approval for approval of the eventual Project.

a. The United States Government has exclusive sovereignty of airspace of the United States (49 U.S.C. § 40103(a)(1)). In order to use this airspace, the FAA Administrator is responsible for:

(1) Plans and policy for the safe use of the navigable airspace (49 U.S.C. § 40103(b)(1)); and

(2) "[R]egulations on the flight of aircraft (including regulations on safe altitudes) for (A) navigating, protecting and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicle, and between aircraft and airborne objects" (49 U.S.C. § 40103(b)(2)).

b. The FAA's aeronautical studies for the Oat Hill Residential Project structures are the definitive standard for assessing compliance with federal aviation safety laws and regulations, including height of structures (14 CFR § 77.1(c)). This federal authority is recognized in State law (Cal. PUC § 21240).

5. The City of American Canyon has land use authority to regulate land use on the Project site. This authority is acknowledged under State law (Cal. PUC § 21670 and § 21676), including the process which allows the City to overrule an ALUC finding of inconsistency. Though the ALUC is given authority to review and comment on proposed land use decisions, its comments as to consistency are advisory only. (*Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal.App.4th 357, 372 [citing Pub. Utilities Code § 21676].) The City retains ultimate authority to regulate land use within the airport land use plan area. (*See id.* at 373.)

a. The City may further consider the Caltrans Handbook in regulating land use within the airport land use area, as the Handbook was created in accordance with State Law to "(1) provide information to ALUCs, their staffs, airport proprietors, cities, counties, consultants, and the public, (2) to identify the requirements and procedures for preparing effective compatibility planning documents, and (3) define exemptions where applicable (Caltrans, 2011)." The Handbook provides specific guidance for assessing potential airspace obstructions in Section 4.5, Airspace Protection, which indicates that potential hazards to air navigation should be evaluated by the FAA.

6. The proposed Project is consistent with the safety standards of the ALUCP for those portions of the Project within Zone E and with the safety standards of the Caltrans Handbook Zone 6 for those portions of the Project within ALUCP Zone D. The Project will not be subject to safety hazards, in accordance with the State Aeronautics Act.

C. **Airspace Protection.** The residential land uses under the proposed project will comply with the FAA's findings in its aeronautical study initiated on May 21, 2021.

1. The FAA conducted an aeronautical study (49 U.S.C. §44718 and 14 CFR Part 77) and its Determinations are pending. A FAA determination establishing that the Project would be neither an obstruction nor a hazard to air navigation would be a condition of approval for the Project.

a. As provided above, the United States Government has exclusive sovereignty of airspace of the United States (49 U.S.C. § 40103(a)(1)).

b. In order to use this airspace, the FAA Administrator is responsible for:

(1) Plans and policy for the safe use of the navigable airspace (49 U.S.C. § 40103(b)(1)); and

(2) "[R]egulations on the flight of aircraft (including regulations on safe altitudes) for (A) navigating, protecting and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicle, and between aircraft and airborne objects" (49 U.S.C. § 40103(b)(2)).

2. The FAA's aeronautical studies for Oat Hill Residential Project structures are the definitive standard for assessing compliance with federal aviation safety laws and regulations (49 U.S.C. § 77.1(c)). This federal authority is recognized in State law (Cal. PUC §21240).

3. The proposed Project based upon a FAA Determination is consistent with airspace protection policies and would not be a hazard to air navigation.

D. **Overflight.** The residential land uses under the proposed Project are consistent with the overflight standards of the ALUCP for those portions within Zone E and the Caltrans Handbook definition of Zone D, the “Traffic Pattern Zone.”

1. The ALUC found that the portion of the project within Zone E (Parcel B and 151 units associated with Parcel A) is consistent with the ALUCP overflight standards.

2. Regarding the Project’s 51 units that are located within ALUCP Zone D, the ALUCP provides that impacts from overflight are commonly considered an annoyance, which are subjective and vary widely from individual to individual. As stated above, the Project is well-outside the 55, 60, and 65 dB CNEL contour lines and will be constructed in accordance with California building regulations, which require that interior noise levels attributable to exterior sources not exceed 45 dB CNEL.

3. Further, as provided in the Caltrans Handbook, the primary mechanism for addressing overflight is buyer awareness, not direct restrictions on land use. Buyer awareness often takes the form of notice as part of residential real estate transactions or recordation of an overflight notification or avigation easement.

4. The City has included a condition of approval for the Project that requires a buyer awareness notification of the Napa County Airport and the potential for aircraft overflight.

5. Accordingly, the proposed Project is consistent with the Caltrans overflight standards.

Section 3: To the extent that the ALUC’s failure to act within 60 days pursuant to PUC Section 21676(d) has not resulted in the Project being deemed consistent with the ALUCP by law, the City Council hereby notifies the ALUC and the State Division of Aeronautics that it intends to overrule the ALUC’s determination that the Project is inconsistent with the ALUCP.

Section 4: City Council directs City staff to provide notice to the ALUC and State Division of Aeronautics of the City Council’s intent to overrule the ALUC’s determination that the Project is inconsistent with the ALUCP, and provide the ALUC and State Division of Aeronautics a copy of this Resolution.

Section 5: This Resolution is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines. This Resolution does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment because it is limited to the notification of the City’s intent to overrule the ALUC determination. This Resolution does not authorize the development of the Property or commit the City to approve the Project.

PASSED, APPROVED and ADOPTED at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 20th day of July, 2021, by the following vote:

AYES: Council Members Oro, Washington, Vice Mayor Joseph, and Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: Council Member Aboudamous

DocuSigned by:
Leon Garcia
BA1BB3340DAC47C...
Leon Garcia, Mayor

ATTEST:

DocuSigned by:
Taresa Geilfuss
669347683BC94DC...
Taresa Geilfuss, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
William D. Ross
C407ECD6E1A8440...
William D. Ross, City Attorney