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Airport Land Use Commission

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David Morrison
Executive Officer

August 18, 2021

William He, AICP
William Ross, City Attorney
City of American Canyon
Community Development Department
4381 Broadway Street, Suite 201
American Canyon, CA 94503

Re: Oat Hill Project – Response to Notice of Intent to Overrule
Airport Land Use Compatibility Consistency Application File No. P21-00056-ALUC

Dear Mr. He and Mr. Ross:

On July 21, 2021, the Napa County Airport Land Use Commission (“ALUC”) received the City of American Canyon’s (“City”) Notice of Intent to Overrule the ALUC’s June 23, 2021, Consistency Determination on the Oat Hill Residential Project (ALUC File No. P21-00056-ALUC, hereinafter, the “Project”). Pursuant to the State Aeronautics Act (the “Act”), the ALUC hereby responds to the grounds set forth in the Resolution adopted by the City. As directed by the Act, please be advised that the City is required to include this correspondence in the City’s administrative record for the project.

Purpose and Goals of ALUCP

The requirements in the Napa County Airport Land Use Compatibility Plan (“ALUCP”) are designed for the dual purpose of “protect[ing] the 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.” (Public Utility Code, § 21670, subd. (a)(2).) The ALUCP states that the ALUC’s duty is “to assist local agencies in the determination of compatible land uses in the vicinity of airports and to coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation while at the same time protecting the public health, safety, and welfare.” (ALUCP, p. 1-1.)

From 1999 to 2009, the City did not conform its General Plan to the requirements of the Act, disclaiming the role of the ALUC as the coordinating agency for land uses near the Napa County Airport. In 2009, the City completed the steps to correct that problem by amending its General Plan and land use regulations to incorporate aviation-land use compatibility measures to achieve consistency with the Act and the ALUCP.

The most notable component of those amendments, which are still part of the City's General Plan today, was the City's adoption of the Airport Vicinity Land Use Compatibility Criteria (Tables 3-1, 3-2) from the ALUCP, without amendment. These Criteria, which are contained in Figures 1-3 and 11-1, and Tables 1-1, 1-2, 11-1 and 11-2 of the City's General Plan, clearly state that residential uses are prohibited within Airport Land Use Compatibility Zone D (Zone D). More specifically, City Land Use Element requirements under Table 1-2, page 1-53, lists "All residential uses" in the column for "prohibited uses" for the City's Compatibility Zone D. In addition, Table 1-1 and Table 11-2, Footnote 1 states "Residential land use and zoning designations are considered incompatible within the traffic pattern area (Zones A, B, C and D)..." Despite this fact, the City is poised to take an action that is in direct conflict with this prohibition in both the ALUCP and its own General Plan.

If it is now the City's intention to not consider the policies it adopted, willingly, in order to achieve consistency with the Act and the ALUCP, then the ALUC may no longer be in a position to stand by its 2009 consistency determination relating to the City's General Plan. Consequently, the ALUC will consider taking action to revoke its past consistency determination if the City moves forward with the proposed overruling as presented.

Timeliness of ALUC Review

The Resolution adopted by the City contains a claim that the ALUC did not act in a timely manner and, therefore, the Project could be considered consistent as a matter of law. This conclusion is based on a factually and legally incorrect claim that directly undermines the purpose and authority of the ALUC by asserting that the ALUC must act upon incomplete information.

The City claims that the Project was initially referred to the ALUC on March 26, 2021, and that the ALUC was therefore required to conduct a hearing and make a determination within 60 days from that date. However, as has been previously discussed with City staff, the initial application submitted on March 26, 2021, did not contain the information required to constitute a referral under ALUCP policy 2.1.7. The City failed to provide six required components for a complete submittal to the ALUC with the initial application. On April 23, 2021, within 30 days after receiving the incomplete submittal, ALUC staff provided a response detailing the information required to constitute a complete referral. City staff provided additional information on May 6 and May 7, 2021, but to this day, the City has not provided all of the requested information. Nevertheless, the ALUC held a hearing well within 60 days from the submittal of the additional information on May 7, 2021.

This process is consistent with the California Airport Land Use Planning Handbook (the "Handbook"), which the City relies upon heavily in its Resolution. The Handbook provides a model application process, which includes step-by-step guidelines for processing a referral to the ALUC. Step 1 of the process sets forth the "minimum requirement[s]" for a complete referral, which are similar to those requirements set forth in ALUCP policy 2.1.7. Step 4 describes a process for determining the completeness of the application, including a notice of incompleteness that describes the items that must be submitted before ALUC staff can review the project. The ALUCP contains an application review process that tracks the model from the Handbook and that allows the ALUC to engage in meaningful

review of proposed projects. Without the requirement that complete information be submitted with an application, any resulting referral would essentially be meaningless. Because the sufficiency of the submittal was entirely within the City's control, the ALUC is not responsible for any delays caused by the insufficient application, nor can those delays be counted against the timelines set forth in Public Utilities Code section 21676(d).

The Project Does Not Comply with State and Federal Laws

The City's Resolution of findings relating to overruling the ALUC determination of inconsistency identifies the four compatibility standards set forth in the ALUCP. However, the City's analysis begins with the false premise that the ALUCP is outdated. While the ALUCP was last comprehensively updated in 1999, the adequacy of the policies in the ALUCP have been affirmed since then and no substantive changes are required. The basis for the City's claim rests on two false narratives. First, the City inaccurately claims that the operational changes since 1999 should allow housing closer to the airport. Specifically, the City claims the cessation of flight school operations requires re-evaluation of the ALUCP. The second false narrative is that the 2011 update to the Handbook required the ALUCP to update its policies.

First, the City states that the airport operations have changed and the ALUCP should change with it. The City relies on an incorrect operations metric to reach the conclusion that residential use is now warranted within Zone D. While it is true that the current level of operations at the airport are less than what was occurring when the pilot training school was in operation, the correct standard for determining appropriate boundaries for land use compatibility zone is the forecasted operations of the airport. The ALUCP reflects the fact that, despite the pilot training school being closed, the airport retains a vested right to operate at the more intense level analyzed and addressed in the ALUCP. As an example, the flight school could reopen tomorrow and fly patterns over Oat Hill without any approval from the ALUC, the City, the FAA, or Caltrans. Therefore, absent the airport abandoning its vested development rights, it would be inappropriate for the ALUC to diminish the land use criteria in the ALUCP.

Second, the City points to the fact that the state updated its Handbook in 2011 and the ALUCP did not change after that update. The City does not acknowledge, however, that the Handbook simply "provides guidance for meeting the baseline safety and compatibility requirements." The guidance includes statutory minimum requirements but allows ALUCs to "choose to be more restrictive than the State's guidance when their local conditions warrant doing so." (Handbook, p. vii.) The ALUC is best suited to determine the impact that local conditions will have on airport operations and the health, safety and welfare of the public. More importantly, the City does not acknowledge the more restrictive standards in the ALUCP, which as described above, were incorporated into the City's General Plan. Without such an acknowledgement, the City's findings are inadequate to show consistency with the purposes of the State Aeronautics Act. (Public Utilities Code §21676.)

The City also does not consider that both the ALUC and Caltrans Aeronautic Division reviewed the ALUCP in 2005 as part the City's previous proposal to develop housing in Zone D on Oat Hill. In 2005, Mead & Hunt conducted evaluations of the land use boundaries in the ALUCP, and the ALUC's consultant ultimately recommended, after consultation with Caltrans Aeronautics Staff, that changing

the ALUCP to allow housing closer to the airport, and on a land feature that penetrates navigable airspace was inappropriate. (*Oat Hill Development Land Use Compatibility Analysis*, Mead & Hunt, September 2005, p. 13.) The ALUC understands and appreciates the critical need for new housing both locally and regionally. However, the critical need is not a basis to dismiss or disregard existing ALUC and City requirements put in place to ensure harmony between residential uses and airports.

In the Resolution, the City sets aside the ALUC's analysis of the four consistency criteria set forth in the Act: noise, safety, airspace protection, and overflight. What the City does not acknowledge is that the compatibility zones identified in the ALUCP, and directly incorporated in the City's General Plan, resulted from a comprehensive analysis of all four criteria with specific consideration for the local conditions, topography, and airport mission and operations. The more restrictive local compatibility criteria were determined to be necessary to balance the dual purposes of providing for orderly development of airport operations and protecting the public health, safety and welfare. The City's analysis of whether the Project is consistent with the goals and purposes of the State Aeronautics Act must recognize that the Handbook only provides guidance and does not prohibit local jurisdictions from adopting more restrictive policies where local airport operations and conditions warrant them.

Noise Standards

The ALUC found that the Project was inconsistent with the noise standards established in the ALUCP. Primarily, the ALUC found that the City failed to include any analysis of single event aircraft noise, as required by the ALUCP. The City now relies on the fact that neither the Federal Aviation Agency ("FAA") regulations, nor the 2011 update to the state Handbook identifies single event noise metrics as a requirement. However, both the federal and state regulations of airport-related noise defer to more restrictive local requirements. Federal Aviation Regulations ("FAR") Part 150 includes guidelines for establishing airport noise standards. As the City points out, Part 150 does not include single event noise metrics; however, Appendix A to Part 150 states:

The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible uses.

Similarly, the state regulations from the Department of Transportation's Division of Aeronautics do not include metrics for single event noise analyses. However, as with the FAA regulations, the state standards are not intended to preempt local airport noise limitations. "The noise limits specified herein are not intended to prevent any local government to the extent not prohibited by federal law or any airport proprietor from setting more stringent standards." (21 Cal. Code of Regs. §5004.)

The City, as well as all other local jurisdictions within Napa County, has conformed its General Plan to the ALUCP, which means that the City has adopted more restrictive noise standards than the

minimum in state or federal law. The City has not performed any analysis of the Project's consistency with these standards, nor has the City shown why these standards should not be applied.

Safety Standards

The ALUC is charged with minimizing the risk that aircraft accidents pose to people and property on the ground near airports. The compatibility zones in the ALUCP incorporate the ALUC's analysis of the spatial distribution of potential aircraft accidents balanced against the potential consequences of aircraft accidents. The City claims that a conflict exists between the ALUC's determination of the boundaries of its Zone D and the state Handbook's standards for Safety Zone 6. The City claims that Zone D is too restrictive and expansive and that Safety Zone 6 from the state Handbook should establish the standards for the Napa County Airport.

The City's position ignores the scope and purpose of the state Handbook, as outlined in the Handbook itself: "The 2011 Handbook provides guidance for meeting the baseline safety and compatibility requirements; however, ALUCs may choose to be more restrictive than the State's guidance where their local conditions warrant doing so." (Handbook, p. vii.) The ALUCP is not in conflict with the Handbook where the ALUCP establishes more restrictive requirements based on local conditions and airport operations. The City, which adopted the precise boundaries and policies of Zone D into its General Plan, fails to show that the Project will be consistent with the more restrictive standards, nor does the City establish why such standards should not apply to the Project.

Airspace Protection

The ALUCP requires that a project comply with FAA regulations for airspace protection. The City acknowledges what ALUC staff has maintained throughout: that the elevation of the land feature underlying the Project is within navigable airspace and that an FAA has not yet made a determination that the Project is not an airspace hazard. The City does not have sufficient evidence to conclude that the Project meets standards in the ALUCP or in state or federal law.

Overflight

The overflight standards in the ALUCP are chiefly concerned with compatibility of land uses in the qualitative sense. Residential uses near airports tend to be a nuisance and to generate opposition to airport operations or any expansions thereof. As described in the 2005 study by Mead & Hunt regarding the potential inconsistency of a residential project on the very site of the Project, "overflight effects are a compatibility concern today, and are expected to increase. It would be inappropriate to permit introduction of residential uses where overflight impacts are a concern." (*Oat Hill Development Land Use Compatibility Analysis*, Mead & Hunt, September 2005, p. 13.) The authors of the study concluded that, overall, there are no grounds to shift the boundaries of Zone D. (*Id.*)

While the City correctly states that buyer awareness is an appropriate mechanism for addressing potential overflight issues, the City does not acknowledge that the Zone D restrictions on land uses encompasses more than just overflight concerns. The mere introduction of sensitive land uses into areas

impacted by airport operations is an encroachment on airport operations. The ALUC has determined, based on all relevant consistency criteria, that Zone D marks the appropriate boundaries for such sensitive land uses. The City's effort to particularize the consistency criteria ignores the overall analysis underlying the ALUCP and avoids the simple fact that local conditions require more restrictive standards than provided in state or federal law.

Conclusion

The ALUC staff has reviewed the City's Resolution to overrule the determination that the Project is inconsistent with the ALUCP. To justify overriding the ALUC's determination, the City is required to show that the Project is consistent with the legislative findings identified in PUC section 21670. After its review of the City's Resolution, the ALUC believes that the findings are inadequate in that they do not recognize or acknowledge the local conditions that gave rise to the ALUCP's more restrictive regulations. Because the ALUC is empowered to establish such regulations, the City must explain why these regulations should not be applied to the Project. Absent that, the City has failed to meet its burden to show that the Project will "protect 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..." (PUC §21670, subd. (a)(2).)

Please contact John McDowell, ALUC-Staff, by phone at (707) 299-1354 or e-mail at john.mcdowell@countyofnapa.org if you have any questions or comments.

Sincerely,

Charles Koch
ALUC Chair

cc: Jason Dooley, ALUC Counsel
David Morrison, ALUC Executive Officer
Rick Hess, RH Hess Construction