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Agenda Date: 3/3/2010
Agenda Placement: 8A

Airport Land Use Commission Board Agenda Letter

TO: Airport Land Use Commission
FROM: John McDowell for Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: John McDowell, Deputy Director - 299-1354
SUBJECT: St. Regis Napa Valley Resort Airport Compatibility Determination # P10-0003-ALUC

RECOMMENDATION

S.R. NAPA, LLC / STANLY RANCH VINEYARDS - ST. REGIS NAPA VALLEY RESORT GENERAL PLAN AMENDMENT, REZONING, MASTER PLAN AND TENTATIVE SUBDIVISION/CONDOMINIUM MAP - AIRPORT LAND USE CONSISTENCY DETERMINATION # P10-0003-ALUC

Request: Airport Land Use Determination for a General Plan Amendment, Rezoning, Master Plan and Tentative Subdivision/Condominium Map by S.R. Napa, LLC to allow a 245-unit resort including 150 guest units, 95 vacation home units, recreation and event space, restaurants, a spa, operations and support facilities, and a 25,000 cases/year winery. The project is located on four parcels consisting of approximately 93 acres, on the southwest side of Stanly Lane, approximately 0.82 mile south of SR 12/121, at the intersection of Stanly Road and Stanly Cross Road (Assessor's Parcel Numbers: 047-230-049, -050, -051 and -052) within Napa County Airport Land Use Compatibility Zones D and E.

Staff Recommendation: That the Commission find the project inconsistent with the Airport Land Use Compatibility Plan (ALUCP) and provide direction to the City of Napa on measures that would be necessary to achieve consistency.

Staff Contact: John McDowell, 299-1354, john.mcdowell@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

1. That the ALUC adopts the attached resolution finding the St. Regis Napa Valley Resort project inconsistent with the Napa County Airport Land Use Compatibility Plan.

Discussion:

The proposal before the ALUC is for a resort hotel that includes 150 hotel units, 70 whole-ownership and 25 fractional-ownership residential units, a winery, restaurant, spa, new lake, event lawns and other amenities on a 93 acre site located off Stanly Lane northwest of Napa County Airport primarily within Land Use Compatibility Zone E with a small portion within Zone D. In October, 2009 the ALUC submitted Draft EIR comments to the City of Napa that raised several serious concerns and requested the ALUC be provided with additional background information (Attachment - Draft EIR Comments). The letter restated ALUC Staff's previous suggestions that the applicant and City bring the project informally before the ALUC and to other organizations concerned with airport compatibility prior to formal submittal of the required application to the ALUC. ALUC Staff routinely recommends this approach on larger projects with the understanding that the voluntary, pre-application review can be a valuable way to avoid unnecessary problems and difficulties. Unfortunately, the applicant and City chose not to exercise this option for early consultation, and the project as currently submitted cannot be recommended for consistency with the Airport Land Use Compatibility Plan (ALUCP).

The ALUC must act on the project at this meeting to meet State-mandated timelines pursuant to Public Utilities Code (PUC) 21676.(d). Information necessary to determine compatibility requested in the October 9, 2009 letter was not addressed in the City's Final EIR and staff report, nor have they been satisfactorily addressed in subsequent discussions with the applicant. Several aspects of the project are fundamentally in conflict with the ALUCP. These include the following: 1) Prohibited residential uses in Zone D; 2) Failure to adequately consider flight patterns before locating homes in Zone E; 3) Failure to disclose how outdoor event areas will be used; 4) Inclusion of a new central water feature, which are classified as a "normally not acceptable use" in ALUCP, without mitigating bird attractants or demonstration of meeting a major community benefit.

As a formal application, the ALUC must now act on the project submitted for review, and can either find it consistent or inconsistent with the ALUCP. State law mandates that the ALUC cannot apply conditions of approval or grant a conditional approval [PUC 21676(b)]. In order for the applicant to be consistent with the ALUCP, the applicant should withdraw their ALUC application and revise their proposal and supporting environmental documentation to address the issues raised in October 2009. In lieu of that action, the ALUC is obligated to formally act as follows: 1) find the project inconsistent with the ALUCP and provide direction to the City and applicant on what measures could be employed to achieve consistency; or 2) find the project consistent with the ALUCP based on evidence in the record.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The City of Napa has prepared an Environmental Impact Report for the project, SCH # 2009032009. As the Lead Agency, the City of Napa has principal responsibility for carrying out or approving the project. The ALUC's action on the proposal is not a "project" as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and as set forth in the California Airport Land Use Planning Handbook (Page 4-10, Caltrans Division of Aeronautics, 2002), therefore, CEQA is not applicable to the ALUC action. The ALUC's action is to render a finding whether the proposal is consistent with adopted ALUCP policies and is not responsible for carrying out or approving any other component of the project.

BACKGROUND AND DISCUSSION

Airport Land Use Compatibility Factors:

1. Location –The 93 acre project site is located northeast of the Napa County Airport on gently rolling terrain primarily planted with vineyards, approximately 9,700 ft. from the threshold of Runway 18 Right/36 Left, or approximately 8,100 ft. from the extended centerline of Runway 18R. The site is in close proximity to the downwind approach leg for Runway 18R. This is the most heavily used flight pattern at the Napa County Airport (Attachment - 2007 Napa County Airport Master Plan, NEPA Environmental Assessment, Preliminary Flight Tracks, Exhibit 4.1-1). The project site is located on the northern end of this downwind leg where aircraft begin turns onto the base leg.

The majority of the site is located within Compatibility Zone E; the southeastern portion of the site is located within Compatibility Zone D. Overflights in close proximity of the project site are common with aircraft altitudes typically ranging between 1,000 feet and 2,000 feet depending on the type of aircraft and its associated landing or takeoff pattern characteristics. Departure traffic from Runways 36L and 6 to points north overfly the site. Zone E is defined as Other Airport Environs, an area of typically low risk with overflight annoyance being the primary impact element. Zone D is defined as the Common Traffic Pattern that is characterized as an area of moderate risk and substantial noise. As evidenced by the various flight pattern exhibits attached to this report, the Zone D/E dividing line, which is plotted at a 10,000 feet arc from the runways, does not demark a hard and fast boundary between where planes commonly fly and where they are uncommon. In recognition of this fact, the Airport Land Use Compatibility Plan (ALUCP) provides guidance that, ". . . consideration should be given to the proximity of flight patterns, frequency of overflight, terrain conditions, and types of aircraft in determining acceptable location of residential uses." (Attachment - *Airport Vicinity Land Use Criteria*, Table 3-2, Footnote 7, pertaining to allowable uses in Zone E)

In the ALUC Draft EIR comment letter to the City dated October 9, 2009, it was requested that the City address the frequency, duration and type of aircraft overflights occurring over the site. The City's responses to the ALUC comment letter (Attachment - Final EIR Responses) essentially states that the requested information is not necessary. That information has not been included in the City Final EIR nor the subsequent City staff. ALUC Staff disagree with the City's conclusions that this information is not necessary in order to review the project. While ALUC Staff are not expecting exhaustive review, we believe the response to ALUC comments included in the City's Final EIR is inadequate for CEQA purposes and fails to meet the City's obligations to evaluate the project for compatibility with an airport as required by City Ordinance, the ALUCP and the State Aeronautics Act. On the particular point of quantifying overflight, the EIR author incorrectly assumes that the sole reason to evaluate the specific overflight characteristics is to address cumulative noise impacts and then concludes that, ". . . if it were appropriate to evaluate single-event noise impacts, it would be inherently too speculative to do so." (Page 3-72, St. Regis Napa Valley Project Final EIR). ALUC Staff recommend that project be found inconsistent with the ALUCP because the City has, so far, failed to adequately account for the overflight characteristics related to the project as mandated by ALUCP Table 3-2, Footnote 7.

2. Land Use – The majority of the project site is located within Compatibility Zone E with the southwestern portion located within Zone D (Attachment - Airport Land Use Zones, Draft EIR Exhibit 3.9-1). Zone D allows most non-residential uses and Zone E allows generally all land uses with the exception of amphitheaters, landfills, ponds, and with residential uses sited with consideration of overflight characteristics (as noted in previous Item #1, Location). Several aspects of the project conflict with land use limitations set forth in the ALUCP as described below:

Residential Uses in Zone D - Five of the vacatuib resirt residences, known as "vineyard units" (fractional ownership residences) are located within Zone D (with the remaining 20 in Zone E in close proximity to Zone D). Zone D prohibits all residential uses regardless of ownership arrangements. The applicant is arguing that the fractionally-owned units are not residences but are instead a "transient use" no different than a hotel room, which is an

acceptable use within Zone D. The City's Response to Comments states that owners and renters, ". . . would occupy the units for short and discrete periods of time" (Page 3-65, St. Regis Napa Valley Project Final EIR). Consequently, it is rationalized that this limited duration of owner occupancy renders the units a non-residential, transient use.

ALUC Staff believe it is more accurate to classify these units as residential for the following reasons: 1) These units are described in the Draft EIR as both "vineyard units" or "vacation homes" that are ". . . Intended to be vacation homes and available to be sublet to guests when owners are away; 2-to 4-bedroom units with kitchen facilities . . ." (Attachment - Draft EIR, Table 2-2: St. Regis Napa Valley Resort Units). These units have been evaluated as vacation homes for the purposes of other impact analysis, so they must also be considered vacation homes for the purpose of evaluating airport compatibility; 2) The narrative component of the application filed with the City (Attachment - St. Regis Napa Valley Resort Application) states, "St. Regis Napa Valley will include a program offering deeded member-owned two- to four-bedroom units. The amenities that will be available to members of this program include all resort amenities (spa, pools, restaurants, room service) as well as the St. Regis staff housekeeping services. This program was developed specifically to combine the benefits of *second home ownership* and the amenities and services available from a first-class hotel facility. Owners benefit from conveniences, services and amenities that are usually not provided by freestanding, condominium developments. . ."; (3) ". . . An ownership interest in the St. Regis Napa Valley is conveyed by a deed, which is recorded and is guaranteed by a title insurance company. Each member will own a deeded fee simple interest in one or more club interests." This fee ownership arrangement distinguishes vineyard units from traditional hotel units; 4) The units will contain all the accoutrements of a traditional home including two to four bedrooms, living room, kitchen, dining area and enclosed outdoor leisure areas; 5) The St. Regis web site information indicates that the project proponent markets similar units in other locations as "residences" (Attachment - St. Regis Web Page); 6) The City's Notice of Preparation and Notice of Completion both describe the units as vacation homes (Attachment - NOP/NOC); and, 7) Unit owners will have a vested interest in their property to realize appreciation and/or depreciation of their asset as the market and surrounding circumstances dictate which makes these units more like home ownership rather than transient occupancy.

Residential land use in close proximity to airports and flight paths conflict with airport operations. Homes built near airports result in pressures to alter flight paths and airport operations as a result of the new home owners objecting to aircraft overflights. These fractionally-owned vineyard units will conflict with airport compatibility like any other type of residence due to this home ownership component, and possibly more; instead of a single property owner per unit, there are potentially 12 separate owners for each fractional unit. Vineyard unit owners may be more sensitive to and more likely to object to overflight annoyance due to the quiet vineyard in which the units are set. The five units in Zone D results in 60 potential owners. The project, as a whole, results in the potential for 370 owners with 70 whole-ownership units and 25 fractional-ownership units with up to 12 owners each.

By comparison, hotel units are an allowed use in the ALUCP generally because the potential for complaint and prolonged lobbying for change from home owners is non-existent. Unlike residences, hotels located in close proximity to airports have not resulted in calls to alter an airport's operations after the hotel is completed. Noise from related airport operations is recognized and expected at an "airport hotel". If one stays for two nights in a hotel and has a bad experience with airport noise, one may not choose to return there the next visit. Fractional owners will be returning regularly over many years, unlike transient hotel visitors. The project is inconsistent with the ALUCP because it results in new residential units within Zone D. Direction should be given to the City advising that the project be redesigned to move units well outside of Zone D.

Residential Uses in Zone E - As discussed in Item #1 above, ALUCP *Airport Vicinity Land Use Criteria*, Table 3-2, Footnote 7, states that approval of new residential uses in Zone E is contingent upon, "Consideration (being) given to the proximity to of flight patterns, frequency of overflight, terrain conditions, and type of aircraft in determining acceptable location of residential uses . . ."; the applicant and City have not submitted substantive evidence or

analysis of how these factors would be considered in locating residential uses. The applicant relies solely on the ALUCP Airport Impact Areas Map, Figure 5C (Attachment - Airport Impact Areas). Although this reference is a valuable starting point to conducting a complete evaluation, there is an obligation for the ALUC and local jurisdiction to consider all reasonably obtainable evidence concerning overflight characteristics as part of making an overflight compatibility determination pursuant to PUC 21670.

Readily obtainable information pertaining to overflight characteristics was contained in the earlier, City-certified 1998 Stanly Ranch EIR; that information was not included in the current 2009 EIR. The 2009 EIR could also have relied on information contained in the two previous 2003 ALUC evaluations of the property when the current property owner obtained City approval of the agricultural subdivision that includes the project site. Included in Attachment XX is substantial evidence indicating that regular overflights occur in close proximity to the project site. Past information includes excerpts from: 1) The 2007 Napa County Airport Master Plan; 2) The 1991 Napa County Airport Master Plan; 3) Flight path evidence considered during the City's 1998 Stanly Ranch EIR; 4) Stanly Ranch, LLC v. County of Napa ALUC, Case No. 26-04804, Napa County Superior Court, July 22, 1999; and, 5) Air navigation maps; and 6) A 2005 flight path study prepared by aviation consultants Mead and Hunt. That information indicates that the project site is subject to regular overflight. No explanation has been given why that information was not included in the City's evaluation.

The key, unanswered question is whether the design and placement of the "whole ownership vineyard units" will result in single-event overflight annoyance. These units will be set away from the main resort among vineyards. As indicated in the EIR's Noise Analysis, the existing background noise level in this area is quite low. The conceptual designs of these units feature large amounts of outdoor living area and expanses of windows to take advantage of the vineyard setting. This combination of a quiet setting and homes designed to bring the outdoors in appears to be a significant risk to overflight annoyance problems. Analysis on this topic by a qualified aviation expert, as requested by the ALUC last October, is obviously necessary in order to have adequate information from which to base on final consistency determination.

Absent this information, the ALUC must find the units located in Zone D inconsistent with the ALUCP. The applicant's February 17, 2010 letter (Attachment - Applicant Letter) states that the site plan has not been completed, and the City will consider and approve a design at a later date. ALUCP Policy 2.1.10 states that a finding of consistency or inconsistency applies to the particular version of the plan referred to the ALUC for review. In applying that policy, the ALUC must base its decision of this proposal *as it has been submitted*, and not on a statement suggesting that the questions will be answered by the City when the site plan and design have been completed. At present, the 41-page, SWA Group, *Stanly Ranch Resort Master Plan Design Guidelines, December 11, 2009* developed for the project contains no measures speaking to airport compatibility, with no mention that the site is subject to the City's existing Airport Overlay district.

In its February 17 letter the applicant states that the City will consider "proximity to flight patterns, frequency of overflight, terrain conditions, and type of aircraft" at the time the project undergoes design review. The applicant cites the proposed Napa Municipal Code ("NMC") 17.30.070(A), (B) and 17.30.080(C) as providing assurances that the airport issues will be addressed at this later design review stage. The NMC sections relied on by the applicant do not refer to the ALUCP considerations on airport compatibility. With no mention of airport compatibility in the project's design guidelines, the City's design review process cannot assure compliance with the ALUCP.

Past ALUC Review of the Property - As noted earlier, a previous resort and residential community (of much greater size) was found inconsistent on the Stanly Ranch properties in 1999, of which this 93 acre project site was a component of the larger development site. Attached Napa Superior Court decision *Stanly Ranch, LLC v. County of Napa ALUC* (Case No. 26-04804), July 22, 1999, found that the ALUC acted appropriately in finding the project inconsistent with the ALUCP due to the placement of homes in close proximity to flight paths.

In 2003, the current property owner proposed rezoning the site and an 18-lot subdivision of the entire Stanly Ranch

property. The zoning assigned to the property was the City's Resource Agriculture designation and proposed lots were a minimum of 20 acres in size. The initial version of this plan was submitted formally to the ALUC and was found inconsistent because the project resulted in the potential for new residences within Compatibility Zone D. The property owner later revised the project by eliminating the potential for residences on three properties in Zone D and limiting the placement of homes on six other properties within Zone D, as close to Zone E as possible (Attachment - 2003 Stanly Ranch Subdivision, Exhibit C). This revised project was brought back to the ALUC and found consistent based on the ALUCP's *Airport Vicinity Land Use Criteria*, Table 3-2, Footnote 1, which permits one residence per lot within agriculturally zoned land. The ALUC's finding of consistency for that project was specific to that project pursuant to ALUCP Policy 2.1.10, which states, "A finding of consistency or inconsistency rendered by the ALUC shall apply only to that particular version of the plan . . . referred to the ALUC. If the local planning commission or governing body proposes any revision to the plan . . ., one copy of the revised plan, ordinance or regulation shall be submitted to the ALUC for a determination whether re-referral is necessary. Re-referral pursuant to statute and this plan will be required for any change to the plan . . . which affects whether the proposed action is consistent with the adopted ALUCP."

In conversation with applicant's representatives, it has been suggested that the ALUC's 2003 action allowing the residences in Zone D commits the ALUC to find the current "vineyard unit" proposal consistent. This is not the case. The ALUCP *Airport Vicinity Land Use Compatibility Criteria*, Table 3-2, Footnote 1 allows one residence per agriculturally-zoned parcel as a means to allow reasonable, minimal use of the land and is essentially in place to protect the ALUC from a "taking" claim. As noted in the second 2003 ALUC report (Attachment - ALUC Report, March 5, 2003), allowing those residences in association with agriculture was far from being an optimal circumstance for ensuring airport compatibility. The residential component of this agricultural project was viewed as a necessary compromise to achieve basic compatibility. Agricultural uses tend to have a high degree of compatibility with airport operations [e.g., as evidenced by relocating Denver International Airport (DIA) from an urban setting to outlying farmlands], and acceptance of a minimal number of residences as obligatory appurtenant features was deemed necessary to lock in the overarching compatible land use. At no point during those negotiations and hearings in 2003 was there any mention of a resort with 95 vacation homes. Likewise, any argument the 95 homes as appurtenant features to a hotel use doesn't compare. Ninety-five homes is 95 homes. The ALUC is in no way obligated to find the current resort proposal consistent with the ALUCP as a result of the 2003 action on the agricultural subdivision.

New Water Feature - The project includes construction of a new lake/water feature which, under ALUCP Table 3-2, is considered a "pond". Ponds are defined as a "use not normally acceptable", i.e., they are not absolutely prohibited but do not typically meet ALUCP compatibility requirements. Such uses may be found acceptable if the ALUC determines that the use serves a major community objective and if mitigation measures are incorporated that will minimize potential airport conflicts. In this case, the pond itself serves no major community benefit other than a recycled-water feature for the resort complex. However, the resort itself can be considered a major community benefit to the City of Napa due to the tremendous revenue it will bring to the City. From ALUC Staff perspective, it appears that this revenue benefit to the City exists whether there is a new lake or not, and ALUC Staff are reluctant to endorse the pond as constituting a "major community benefit".

Ponds are normally unacceptable land uses because they represent a potential bird attractant, which is an existing problem for the County airport given the number of water features existing nearby. The City and applicant have responded to this compatibility concern, which was raised in the October 9, 2009 ALUC letter, by stating that the location of the pond is already a wetland and already a bird attractant, so changing it to a lake does not represent a change from the existing condition (see pages 3-67 through 3-70, St. Regis Napa Valley Project Final EIR). The City's response distorts facts and draws unsupported conclusions. There is an existing 2.6 acre wetland on the site in the general vicinity of the proposed new lake, however, the City fails to mention that the wetland is dry at least nine months of the year and that the new, year-round lake and wetland is 8 acres.

This "water feature" is a new pond. Allowance of the use is contingent upon the ALUC finding that it serves a major

community benefit and mitigation measures have been incorporated into the project. There are no clear mitigation measures contained in the EIR or the design guidelines. In their February 17 letter, the applicants state they will, in the future, provide a mitigation plan. CEQA prohibits deferred mitigation.

The applicant's claim in the February 17 letter that "St. Regis will have a wildlife management plan, which will reduce the presence of birds," and then city proposed NMC 17.30.0809(c) as requiring the applicant to create a wildlife mitigation plan for the new lake. The code section cited does not refer a wildlife mitigation plan, rather it merely requires the project to go through design review. The project's design guidelines do not require a wildlife management plan either. Without a wildlife mitigation plan to review, ALUC Staff cannot determine whether the new water feature will be a hazard to aircraft as a bird attractant. ALUC Staff believes the City's supporting documentation must be revised and augmented to accurately reflect that the wetland will be changed to a much larger lake; should disclose the resultant changes in bird attractant characteristics; should provide wildlife management plan details; and, include the plan as a component of a mitigation measure that specifies how birds, which are hazardous to aircraft, will be managed.

The EIR biological consultant states that mitigation is not necessary because the project is located outside the wildlife hazard buffer set forth in a standard FAA Circular providing direction of typical General Aviation facilities of similar size to the Napa County Airport. The City's response to the ALUC comment states that the wetland already attracts birds, but does not disclose any numbers or species nor mention that the ecology of the water features will be completely altered (i.e., changing from wetland to lake). The response states that the EIR biologist specifically evaluated bird attractant characteristics and concluded that the proposed pond "would not have a significantly greater potential to attract birds than the existing seasonal wetland or other water features in the project vicinity" (Page 3-68, St. Regis Napa Valley Final EIR).

The EIR fails to address the requirement of ALUCP *Airport Land Use Compatibility Criteria*, Table 3-2, Footnote 5. The test in Footnote 5 is not whether the change is significantly greater than existing conditions; the test is that the potential conflicts have been mitigated. The following paragraph of the City's response goes on to correctly note that Napa County Airport already suffers from bird conflicts in the vicinity of the runways and flight paths, but they use that as a rationale to say that they do not need to do anything to mitigate this hazard because the condition exists already.

The proposal is to build resort hotel in a vineyard located in close proximity to the main downwind approach path for an airport that has ongoing issues with birds. The overall area is within the Pacific flyway for migratory birds. They plan to change a 2.6 acre seasonal wetland to an 8 acre year-round lake and wetland with surrounding event lawn areas (Attachment - Pond Aerials). Under existing conditions, if there is an aircraft bird strike resulting in an aircraft accident on the project site, the impact to the site will be the loss of vineyards. If that same event happens after the resort is built, there could be a significant loss of life. That scenario is a significant change to existing conditions and requires mitigation. This project cannot be found consistent with the ALUCP until the project includes measures to prevent waterfowl and other birds from using the water feature.

Sewage Treatment - Related to the pond issue above is the question of new water features or other bird attractants associated with a potential new package treatment sewer plant. There is a concern about compatibility issues over the package sewer treatment plan; no preliminary design of this plant nor a potential location has been shown. For the ALUC to find this aspect of the project consistent with the ALUCP, the location and design must be evaluated by the City and incorporated into the plans with City action provided to the ALUC.

It is ALUC Staff's understanding that the preferred option for the project is to connect to the Napa Sanitation District by constructing a new sanitary sewer force main across the Napa River. Although ALUC Staff have concerns that a new sewer line could lead to additional residential development within the Airport Influence Area, that concern is speculative and cannot be grounds for finding the project inconsistent. In the event that such additional growth occurs within the Airport Influence Area, it would be subject to ALUC review.

3. Concentration of People – ALUCP Airport Vicinity Land Use Compatibility Criteria, Table 3-2, set a maximum concentration of people in Zone D at 100 persons per acre within structures and 150 persons per acre total, in and out of structures. Zone E has no maximum densities but prohibits noise-sensitive outdoor uses and defines amphitheatres as normally not acceptable uses.

Outside Noise-Sensitive Uses - As pointed out in the ALUC Draft EIR comment letter of October 9, 2009, the City's consultant properly evaluated theoretical maximum densities of the project. ALUC Staff have no issue with that analysis. At issue is the absence of evaluation of outdoor special events. The project has at least two outdoor events lawns. The City's recommended conditions of approval will allow temporary events of up to 500 people by right, and allows events exceeding 500 people with the issuance of a temporary event permit. The EIR and the responses to ALUC comments in the Final EIR do not disclose the type, duration, frequency or any other meaningful information about these outdoor uses. In order to find this project consistent with the ALUCP, the City and applicant are obligated to disclose what the outdoor uses will be, or will be limited to, to determine if those uses are noise sensitive and whether they are the equivalent to that of the amphitheater use (a prohibited use).

In its February 17 letter the applicant states that aviation easements will be required for events, but there is no explanation as to how an easement will be implemented on an event nor how it will be enforced. Easements encumber land, not events. Review of St. Regis website information indicates that weddings are common events at other St. Regis venues. All evidence currently available can only lead to the conclusion that this project includes outdoor events space that will be used for noise-sensitive wedding ceremonies, and other events which could result in a conflict with airport operations, contrary to the ALUCP policies and the ALUC's mandate to minimize the public's exposure to noise around public airports (PUC 21570(a)).

4. Building Height – ALUCP Policy 3.3.3 restricts building height to 35-feet or as similarly provided by local ordinance. The proposed resort has a variety of building heights and massing, and with the exception of a few tower features, does not exceed 35 ft. maximum height. As proposed, the project meets ALUCP height requirements and is unlikely to be considered an obstruction by the FAA. In addition, the line of nearby eucalyptus trees already exceed this height.

5. Lighting and Glare – The City of Napa generally has strong standards limiting the amount of light and glare that can be generated with new uses but the City's Final EIR response concerning skylights was vague and unresponsive to the information request. In the likely event that skylights are included in the project, Uniform Building Code (UBC) and new International Building Code (IBC) skylight design requirements now mandate that all incoming light be diffused. Consequently, nighttime lighting from any new UBC-compliant skylights should not pose a significant light and glare impacts to airport operations although that currently dark portion of the airport influence area will have substantially more ambient ground light. ALUC Staff recommend that the City address this issue in the project's Design Guidelines.

6. Communications – No electronic equipment is proposed as part of this facility that could interfere with airport communication.

7. Building Materials – The project will have a modern architectural tone featuring green technologies (e.g., building materials that reflect solar radiation but are not visually reflective). Specific building materials are not yet known but the City is requiring the facility to be LEED-certified. Generally, meeting such certification requirements will result in building exteriors that do not cause hazards to flight, but insofar as the project's design criteria make no mention of airport compatibility measures, it is difficult for ALUC Staff to support the proposal as written. ALUC Staff note that the City found the need to mitigate for air quality impacts by requiring solar panels, but the Draft EIR also finds that light and glare impacts (from solar panels) are insignificant, again failing to acknowledge the sensitive location in proximity to the Napa County Airport flight path. ALUC Staff believe this issue can be addressed easily with a condition of approval and acknowledgment in the Design Guidelines. The same

holds true for standard conditions about flagging on construction cranes and notification of the airport for any temporary aerial obstructions.

8. Noise – The project EIR adequately addresses aviation-related cumulative noise equivalent levels (CNEL's). The project is located well over a mile from cumulative noise threshold boundaries for aircraft departing and approaching the airport. As noted in Item #2 above, ALUC Staff recommend that the project not be found consistent with the ALUCP until an aviation expert evaluates the project's potential to be impacted by single-event, reoccurring overflight noise intrusion, and that mitigation measures are included in the project to address this issue.

9. Overflight Easement – The ALUCP requires recordation of an overflight and aircraft hazard easement on all developing properties. The applicant has stated they would be willing to update and strengthen existing aviation easements contingent upon the ALUC finding the project consistent. It has also been suggested that this offer will be retracted if an override by the City Council is sought.

10. Caltrans Aeronautics – The application and Draft EIR were never referred to the California Department of Transportation, Division of Aeronautics (Caltrans Aeronautics). The City's Notice of Completion filed with the State Clearinghouse at the beginning of the public comment period of the Draft EIR suggested that Caltrans Aeronautics receive a referral, but the City's notice failed to note that the project is located within two miles of the Napa County Airport as required on the form (see Attachment - NOP/NOC). The City and applicant had ample opportunity to solicit Caltrans Aeronautics response since the question was raised by the ALUC in October 2009. In a phone conversation with State Clearinghouse staff on January 25, 2009, they stated that they were not sure why Caltrans Aeronautics was not sent a project referral but they pointed out that the City did not indicate that the project is located within two miles of an airport, and they do not normally refer Caltrans Aeronautics projects that are located more than two miles from an airport.

ALUC Staff contacted Caltrans Aeronautics Staff as part of conducting this analysis and asked for direction on whether they considered time shares and fractional ownerships to be residential or transient uses. They stated that this issue has been a frequent question in recent years and that they could not formally opine on the matter. After further study, they will address the issue in their pending update of the *California Airport Land Use Planning Handbook*. They said it was up to each ALUC to determine what constitutes a residential use and suggested that ALUCs be conservative in their interpretations.

11. Processing – ALUCP Policy 2.1.9 requires referral of a project to the ALUC prior to the local governing body's final action to allow the local jurisdiction to consider the ALUC's finding prior to acting on a project. ALUCP Policy 2.1.8 specifies that formal referral to the ALUC should not occur until after at least one substantive hearing has been held by the local jurisdiction. The policy also encourages early informal review of projects so that compatibility concerns can be addressed prior to formal referral of the application to the ALUC.

Now that the project is formally before the Commission, the ALUC must act on the specific project submitted to the ALUC for review. State law prohibits the ALUC from adding permit conditions to a project [PUC 21676(b)]. Instead, it should be found inconsistent, and direction should be given to the City on what steps are necessary to bring the project into consistency. A subsequent formal filing can be made assuming the City accepts the guidance and chooses to revise the project. Alternatively, the City can pursue an override of the ALUC determination but faces considerable legal risk in doing so, and is obligated by law to refer the override proposal to Caltrans Aeronautics for comment [PUC 21676(b)].

12. Conditions – The City's recommended conditions of approval are attached to the report (Attachment - City Permit Conditions). The applicant has expressed an interest in augmenting those conditions to address compatibility concerns raised. Although ALUC Staff welcomes any action by the applicant to willingly augment conditions of approval, as noted above, the project contains fundamental inconsistencies with the ALUCP that

cannot be remedied with last-minute condition adjustments. The ALUC cannot condition a project, nor grant a conditional consistency determination.

SUPPORTING DOCUMENTS

- A . Application for ALUC Consistency Determination
- B . City Planning Commission Staff Report
- C . DEIR Project Description
- D . DEIR Hazards & Hazardous Materials Analysis
- E . DEIR Noise Analysis
- F . DEIR Land Use Analysis
- G . ALUC Comment Letter, October 9, 2009
- H . ALUC Comment Letter Responses
- I . Applicant Letter from DP&F, February 17, 2010
- J . Stanly Ranch Subdivision 2003 Exhibit
- K . Stanly Ranch ALUC Staff Report April 2, 2003
- L . Stanly Ranch ALUC Staff Report March 5, 2003
- M . Flight Pattern and Overflight Frequency Evidence
- N . Mead and Hunt Flight Track Memo, 2005
- O . ALUCP Airport Vicinity Land Use Table 3-2
- P . City Notices and St. Regis Website Describing Residences
- Q . City Application Describing Residences
- R . Stanly Ranch Court Case
- S . Aerial Photographs of Existing Wetland
- T . Design Guidelines
- U . Graphics

Airport Land Use Commission: Approve

Reviewed By: John McDowell