



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Office of Airports

777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

Sept. 14, 2021

Mr. Eric Peterson
Director, County Airports
Airports Division
2500 Cunningham Avenue
San Jose, California 95148

RE: Federal Aviation Administration (FAA) letters dated Jan. 14, 2021, and Feb. 19, 2021.

Dear Mr. Peterson,

I'm sending this letter to the County of Santa Clara (County) as a reminder that the FAA has not received a response from the County concerning letters that we sent on Jan. 14, 2021 and Feb. 19, 2021.

The following summarizes the content in our letters to the County:

- Our Jan. 14, 2021, letter outlined non-aeronautical uses of aeronautical property that the FAA confirmed are currently occurring at both Reid-Hillview Airport (RHV) and San Martin (E16) Airport. Furthermore, our January 2021 letter explicitly stated that before moving forward on outstanding land-use approvals requested by the County, the FAA would like to understand how the County plans to address grant-assurance-compliance concerns related to the inappropriate land uses currently on the Tully and Capital Field Parcel. These uses include development of airport property for solar-panel installation, use of airport property for a baseball field and vehicle/trailer storage, and leasing space to commercial vendors. We further noted that the unapproved non-aeronautical uses involve land that the Santa Clara Valley Transportation Authority (VTA) is interested in obtaining.
- Our Feb. 19, 2021, letter from the Director of the FAA Office of Airport Compliance again outlines unapproved non-aeronautical uses of airport property and also the lack of attention by the County to address safety concerns at RHV. More specifically, our letter noted that substantial evidence collected through FAA inspections, California Department of Transportation (CalTrans) site visits, and multiple and ongoing user complaints over the past decade indicate the presence of unsafe conditions at RHV. These include fourteen (14) runway incursions and six (6) surface incidents from October 2018 to February 2021. Since our February 2021 letter, RHV has experienced two (2) additional runway incursions totaling sixteen (16) runway incursions and six (6) surface incidents, respectively, since October 2018.

Our February 2021 letter also refers to a Local Runway Safety Action Team (LRSAT) meeting at RHV in March 2020, which was followed up with another LRSAT in March 2021. The County to date has declined to adopt the FAA's recommendations to mitigate ongoing safety issues. We also reminded the County of its existing federal obligations under Grant Assurance 19, *Operations and Maintenance*, to continuously operate and maintain its airports in a safe and serviceable condition.

Finally, our February 2021 letter explicitly expressed the FAA's expectation that the County Board of Supervisors (BoS) will work in good faith to meet its federal grant obligations regarding safety and non-aeronautical land uses regardless of its earlier decision to no longer accept AIP funding for RHV.

In addition, we understand that on Aug. 17, 2021, the BoS voted to seek closure of RHV prior to 2031. The FAA reminds the County that the FAA generally will not approve sponsor requests to close a federally obligated airport prior to the expiration of its AIP grant unless it can clearly show that the disposal of such property will be a net benefit to civil aviation. The FAA continues to take the position that RHV – a busy general aviation (GA) airport with over 209,000 annual operations – is a net benefit to civil aviation as a reliever for both Mineta San Jose and San Francisco international airports, which is not consistent with efforts to close the airport. As such, the County remains federally obligated until 2031 to keep RHV accessible to aeronautical users and to address all aforementioned compliance concerns. Lastly, we strongly iterate that the County's current compliance disposition is unproductive relative to FAA consideration of the County's future plans regarding RHV. Given these circumstances, we do not anticipate considering a proposal to close RHV prior to 2031 that does not also incorporate timely and substantive airport safety and land use mitigations in the intervening period.

In closing, please provide a response to our office by Oct. 11, 2021 that clearly articulates the County's intent in addressing the concerns expressed in our above referenced letters.

If you have questions regarding this letter, please contact Ms. Laurie J. Suttmeier, Manager, San Francisco Airports District Office at (650) 827-7600.

Sincerely,

Mark A. McClardy
Director, Airports Division
Western Pacific Region

cc:

Laurie J. Suttmeier, Manager, San Francisco Airports District Office
Kevin C. Willis, Director, FAA Office of Airport Compliance and Management Analysis
Mike Wasserman, President, County of Santa Clara, Supervisor, District 1
Cindy Chavez, County of Santa Clara, Supervisor, District 2
Otto Lee, County of Santa Clara, Supervisor, District 3
Susan Ellenberg, County of Santa Clara, Supervisor, District 4
Joe Simitian, County of Santa Clara, Supervisor, District 5

Attachments:

Jan. 14, 2021 letter from Laurie J. Suttmeier to Eric Peterson, Director, County Airports
Feb. 19, 2021 letter from Kevin C. Willis to Mike Wasserman, President, Board of Supervisors



U.S Department of
Transportation

**Federal Aviation
Administration**

Western-Pacific Region
Office of Airports

777 S. Aviation Blvd, Ste 150
El Segundo, CA 90245

1000 Marina Blvd, Ste 220
Brisbane, CA 94005-1835

January 14, 2021

Mr. Eric Peterson
Director, County Airports
Airports Division
2500 Cunningham Avenue
San Jose, California 95148

- Re: (1) County of Santa Clara ("County") Request for Status Update Release for "Tully" Parcel at Reid-Hillview Airport (RHV) for Re-designation for Non-Aeronautical Uses and Long-Term Lease.
- (2) Status Update for County's Request for Re-designation for Non-Aeronautical Uses and Long-Term Lease for Solar Panels at RHV.
- (3) Status Update for County's Request for Re-designation for Non-Aeronautical Uses and Long-Term Lease for Solar Panels at San Martin Airport (E16).
- (4) Status Update Regarding the County's Land Release Request to Support Santa Clara Valley Transportation Authority (VTA) on RHV.

Dear Mr. Peterson,

This letter serves as our Federal Aviation Administration (FAA) reply to your October 9, 2020 letter to Mr. Mark McClardy regarding the status of the County's request with respect to the Tully and Capital Field Parcel. It also serves as FAA's reply to other conversations you have had with our office, both written and verbal, regarding FAA approval for County proposals for land uses at both RHV and E16.

The County has discussed four (4) requests with the FAA that would either release airport land from its federal obligation, or change land uses from aeronautical use to non-aeronautical use. With respect to the County requests that the FAA is considering, we note that in three (3) cases the County is currently allowing inappropriate non-aeronautical uses on parcels that are designated for aeronautical use only.

Parcels where the County is currently allowing inappropriate non-aeronautical uses

1. Tully and Capital Field Parcel – On April 2, 2015, the FAA sent a letter that denied the County’s request to release this aeronautical parcel “for non-aeronautical commercial development.” Our denial was based on our determination that the land is needed to support aeronautical use at RHV.

On Sept. 19, 2019, the County again sent the FAA a letter requesting a re-designation of the Tully and Capital Field Parcel for non-aeronautical uses and for a long-term lease. The County sent a follow up letter to the FAA on Oct. 20, 2020. The FAA is considering the County’s request. However, after a Dec. 4, 2020 site visit to RHV, the FAA noticed that the County is allowing inappropriate non-aeronautical uses on the Tully and Capital Field Parcel. Examples of inappropriate land uses that we witnessed include a baseball field, commercial vendors, and storage of vehicles/trailers. In allowing these inappropriate land uses, it appears the County may have disregarded its federal obligations by allowing non-aeronautical uses on land designated to support RHV’s aeronautical needs at this physically constrained airport.

The following pictures, taken December 4, 2020, depict inappropriate non aeronautical land uses on the Tully and Capital Field Parcel currently allowed by the County. The subject parcel is approved by FAA for aeronautical uses only.

Corner of Tully Road and Capital Expressway.



Driving along Swift Road



Driving along Swift Road



2. Solar Panels at RHV – On Oct. 26, 2015, the County sent a proposal to the FAA that advised of your contract with SunPower to develop solar-power-generating facilities on County-owned property. The County proposed to construct solar panels on federally obligated parcels at RHV (near the Airport Traffic Control Tower). The County's letter requested FAA concurrence to release aeronautical-designated property for non-aeronautical use.

Based on Google Earth imagery, the County constructed the solar panels sometime between April 2017 and August 2017, before the FAA completed its evaluation and made a decision on the County's request to re-designate the subject parcels. In allowing this inappropriate land use, the County appears to be in violation of Federal law that requires a sponsor to adhere to its Airport Layout Plan and obtain appropriate prior approval and environmental review in advance of a change.

3. Solar Panels at E16 – On Oct. 26, 2015, the County sent a proposal to the FAA that advised of your contract with SunPower to develop solar-power-generating facilities on County-owned property. The County proposed to construct solar panels on federally obligated parcels at E16 (in the approach path). The County's letter requested FAA concurrence to release aeronautical designated property for non-aeronautical use.

Based on Google Earth imagery, the County constructed the subject solar panels sometime between November 2016 and September 2017, before the FAA completed its evaluation and made a decision on the County's request to re-designate the subject parcels. In allowing this inappropriate land use, the County appears to be in violation of Federal law that requires a sponsor to adhere to its Airport Layout Plan and obtain appropriate prior approval and environmental review in advance of a change.

Normally such requests are routine. However given the Board of Supervisor's Dec. 4, 2018 decision to no longer accept Airport Improvement Program (AIP) funding at RHV for purposes of closing the airport in 2031, it is not clear why the County is pursuing FAA approval to dispose of, or release from federal obligations, aeronautical land at RHV and at E16. It appears the County is asking the FAA to retroactively approve actions the County took without the required FAA authorization.

The FAA does not plan to follow up on the County's request for the three (3) parcels listed above until the inappropriate land uses are addressed by the County in a satisfactory manner.

Parcel where the FAA requested additional information from the County

4. Santa Clara Valley Transportation Authority (VTA) acquisition of 11,268 square feet of property for the Eastridge to BART Regional Connector Project. The County acquired the property in the 1960's using FAA Grants. On July 22, 2020 the County submitted a request to release a quarter-acre parcel on behalf of a proposal by the VTA.

The proposal appears to be part of the Tully and Capital Field Parcel. On Nov. 3, 2020, our office sent an email to the County requesting additional information on this proposal. On Dec. 8, 2020, our office received a response to our email from the County. FAA is reviewing the County's response. Prior to moving forward on this request, we would like to understand how the County plans to address grant assurance compliance concerns related to the inappropriate land uses currently on the Tully and Capital Field Parcel, which the VTA proposal appears to reside upon.

We look forward to hearing back from you on the concerns we raised in this letter with respect to land uses at RHV and E16. If you have any questions, please feel free to contact me.

Regards,

Laurie J. Suttmeier Digitally signed by Laurie J.
Suttmeier
Date: 2021.01.14 10:29:53 -08'00'

Laurie J. Suttmeier
Manager, FAA San Francisco ADO
Office: (650) 827-7601
Cell: (415) 656-9948

Cc: Mark McClardy, Director, FAA Airports Division, Western Pacific Region, AWP-600
Brian Armstrong, Manager, FAA Airports Division, Western Pacific Region Safety and Standards Branch, AWP-620
Kevin Willis, Director, FAA Office of Compliance and Management Analysis, ACO-1



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance and
Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

FEDERAL EXPRESS

February 19, 2021

Mike Wasserman, President
Board of Supervisors
County of Santa Clara
70 West Hedding Street
East Wing, 10th Floor
San Jose, CA 95110

RE: Unsafe Conditions at Reid-Hillview Airport Requiring County Action

Dear Supervisor Wasserman:

It has come to our attention that the County of Santa Clara Board of Supervisors (BOS), sponsor of the Reid-Hillview Airport (RHV), has made decisions and taken actions that undermine the BOS's ability to operate RHV consistent with its federal grant obligations under the Airport Improvement Program (AIP).

Specifically, it is our understanding that on March 10, 2020, the Federal Aviation Administration (FAA) conducted a Local Runway Safety Action Team (LRSAT) meeting at RHV to seek ways to address an uptick in runway incursions at the Airport. During the LRSAT, we understand that the County of Santa Clara Roads and Airports Department (County) declined to commit to providing sufficient resources recommended by aviation experts participating in the LRSAT that were intended to mitigate unsafe airfield conditions. The County's reasoning for not addressing critical safety concerns is the December 4, 2018, decision by the BOS to not accept Airport Improvement Program (AIP) funding for RHV. In addition, we recently learned that the County has engaged in substantial non-aeronautical use of aeronautical property, at both RHV and San Martin Airport (E16), without FAA approval. The BOS's support of the aforementioned actions appears to be connected, in part, to its desire to potentially close RHV in 2031 at the expiration of its existing grant agreements. More recently, on November 17, 2020, the BOS voted 4-1 for the County to proceed with the "Reid Hillview Vision Plan," which on the surface suggests the BOS has made its decision for the future of RHV.

Since 2009, the FAA Western-Pacific Region Airport's Office (FAA-Region) and the BOS have frequently exchanged correspondence about the sponsor's non-compliance with its federal obligations. More recently, on October 18, 2019, and again on Feb. 28, 2020, the FAA-Region sent letters to the BOS in which we explained the importance of RHV to the national airspace system and outlined the FAA's concerns about existing unsafe airfield conditions at RHV that require action by the BOS. Finally, we reminded the BOS of its existing federal obligations, which require you to safely maintain your County-owned airports. Foremost among the discussions is the BOS's continuing obligation under Grant Assurance 19, *Operations and Maintenance*, to operate the Airport in a safe and serviceable condition.

Substantial evidence collected through FAA inspections, California Department of Transportation (CalTrans) site visits, and multiple and ongoing user complaints over the past decade indicate the presence of unsafe conditions at RHV. For example, between October 1, 2018, and February 8, 2021, the FAA documented fourteen (14) Runway Incursions (RI) and six (6) Surface Incidents (SI). The FAA believes the airfield risks associated with these events could be eliminated if the County takes action on the March 10, 2020, LRSAT recommendations. Most recently, in January 2021, an FAA Hotline Complaint was filed against the County for allegedly failing to repair inoperative light posts adjacent to taxiways and hangars whose height and unlighted condition present a safety hazard to aircraft movement areas at RHV. FAA-Region has reminded the BOS on numerous occasions of its obligation to resolve these safety discrepancies, and an FAA investigation into the Hotline Complaint is currently underway.

The County also has allowed multiple non-aeronautical uses of aeronautical property without obtaining required FAA approval. These include the development of airport property for solar panel installation, use of airport property for a baseball field and vehicle/trailer storage, and leasing space to commercial vendors. Such actions violate Grant Assurance 29, *Airport Layout Plan*, and depending on how the revenues were generated and used, could result in a finding of airport revenue diversion in violation of 49 U.S.C. §§ 47107(b) and 47133, and Grant Assurance 25, *Airport Revenues*. After verifying that the County has engaged in substantial non-aeronautical use of aeronautical property at both RHV and E16, the FAA on Jan. 14, 2021 sent a letter to the County asking how it plans to address this matter.

Based on applicable AIP grant agreements, a federally obligated sponsor may not allow an airport to fall into disrepair while considering closure. While the BOS is well within its right to decline further AIP funding, the BOS remains obligated to operate the airport and all facilities necessary to serve the aeronautical users of the airport at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. The FAA Office of Airport Compliance and Management Analysis (ACO) strongly encourages the BOS to make the appropriate improvements to ensure a safe operating environment for RHV aircraft and tenants, including expedient resolution of the outstanding safety and land use compliance violations that the FAA-Region and CalTrans identified.

We also want to remind you that commitments the BOS assumed in its AIP grant agreements are critical in maintaining a high degree of safety and efficiency in RHV design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. These commitments do not expire until at least 2031, whether or not the BOS decides to pursue future AIP grant funding for RHV.

Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances. Under 49 U.S.C. § 47111(f), a federally obligated airport sponsor that fails to take corrective action required by the FAA is subject to judicial enforcement of any grant assurance violation. ACO seeks to avoid such measures and implores the BOS to immediately take the requisite steps to bring RHV into compliance with its federal obligations.

In closing, the FAA will conduct a follow up LRSAT meeting at RHV on March 10, 2021 that will again focus on airfield improvements and/or additional airport planning needed to address ongoing safety concerns. It is our expectation that the BOS will work in good faith to meet its federal grant obligations regardless of its earlier decision to no longer accept AIP funding for RHV. Our office will closely coordinate with FAA-Region on final resolution of the aforementioned concerns, and in the absence of such, will take appropriate steps as necessary.

Sincerely,

**KEVIN
WILLIS** Digitally signed by
KEVIN WILLIS
Date: 2021.02.19
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Kevin C. Willis, Director
FAA Office of Airport Compliance
and Management Analysis

Date

cc: Cindy Chavez, County of Santa Clara, Supervisor, District 2
Otto Lee, County of Santa Clara, Supervisor, District 3
Susan Ellenberg, County of Santa Clara, Supervisor, District 4
Joe Simitian, County of Santa Clara, Supervisor, District 5
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Amy Choi, Division Chief, Caltrans Division of Aeronautics
Mark McClardy, Director, Airports Division, FAA, Western Pacific Region
Raquel Girvin, FAA Regional Administrator
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