



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
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