

## SANTA CLARA COUNTY AIRPORTS COMMISSION

Board of Supervisors  
County of Santa Clara  
70 West Hedding Street  
San Jose, California 95110

Ref: Business Plan Review and Recommendation

This letter is to recommend that the Board of Supervisors reject the Santa Clara County Director of Roads and Airports Business Plan proposal as written.

### **Background for Business Plan Update:**

Santa Clara County's Airport Master Plan and Business Plan were last updated in 2006. Both plans presumed and recommended applying for and accepting FAA Airport Improvement Program (AIP) grants to supplement Airport Enterprise Funds (AEF) to cover capital expenditures associated with maintenance of the airfield facilities.

In 2012 a promoter hoping to establish a skydiving business near the runway at San Martin airport complained to the FAA about the County's refusal to authorize his operation. The dispute led to the FAA suspending AIP Grant approvals from 2012 through 2016, at which time the dispute was resolved. In 2016, then Director of Roads and Airports Michael Murdter ceased applying for and accepting new FAA AIP grants, and elected instead to borrow \$3M from the County General Fund to pay for necessary repaving work at the two airports. FAA and California state grants would have paid 95% of those costs. Mr. Murdter also proposed that property within the Reid Hillview airport boundary be developed for commercial non-aviation use. That proposal required FAA approval, which was denied.

On December 12, 2017, the Board of Supervisors directed the Airports staff to update the Airports Business Plan and to analyze revenue and costs and funding models in light of current real estate values and other Bay Area airport pricing. Former Director of Roads and Airports, Mr. Murdter, was rehired by the County staff to write the report, with a limited budget of \$100,000 to include consultant assistance on airport operations, real estate values and legal strategies. The draft of that report was issued May 9, 2018. The Airport Commission reviewed the report on May 15, and found it to be flawed in a number of areas. The Airport Commission recommends the Board of Supervisors reject the Business Plan and its recommendations as written.

### **Reasons for recommending rejection of the Business Plan:**

1. **Failure to address and provide alternatives around Federal AIP Grant funding and obligations**  
Acceptance of FAA AIP Grants obligates airport sponsors to abide by a set of "Grant Obligations." Examples include operating the airport in a non-discriminatory manner, as well as maintenance and safety criteria. More importantly, AIP Grants include an obligation for the airport sponsor to maintain and operate the airport(s) for a period of at least 20 years from date of receipt of the grant. Since the last AIP grants were accepted in 2011, the County's grant obligations expire in 2031.

In addition, the County also accepted FAA grants to acquire land for the airports, which require the recipient to operate the airport "in perpetuity" per FAA Manual 5190.6B, section 22.3. This issue was addressed in 2008 by then County Counsel Ann Ravel who concluded in a written report to the Board that "if the county wished to pursue closing or sale or lease of the Reid Hillview airport, the legal procedures would be extremely complex and lengthy and likely expensive." We note that the law firm of *Kaplan, Kirsch and Rockwell* was retained as part of the 2018 Business Plan. The nature of their work has been withheld on the grounds of attorney-client privilege. The Commission surmises that they are updating Ms. Ravel's memo.

Despite the Policy in the 2006 Airports Master Plan to apply for and accept FAA grants, the draft Business Plan recommends against this through 2031. This critical policy decision was apparently made with the rationale of "preserving the county's flexibility with respect to the use of the property." Prior justifications of grant refusals were also linked to "operational flexibility." However, this term is not defined. The refusal to incorporate FAA grant funding into the business plan revenues can only be interpreted as a plan to close the Reid Hillview airport (and possibly San Martin) in 2031 and re-purpose the property. Such a decision would negatively impact San Jose Mineta airport as well as emergency operations and services/safety in the event of a natural disaster. Moreover, it should not be accomplished through a funding decision embedded in an updated Business Plan. Finally, it is contrary to long-standing policy and good business sense to decline external funding of 95% of airport improvements and capital costs while borrowing the funds from the county general fund, thus putting the AEF further in debt without a strategy to reimburse the funds.

## **2. Alternative Revenue streams from reduction in Reid Hillview leaseholders from nine to two**

In addition to aircraft space rentals at the airports (tie-downs, shelters and enclosed hangars) each airport leases blocks of land with buildings on them to Fixed Base Operators (FBO's) or Specialized Aviation Services Operators (SASO's). FBO's typically offer aircraft sales, rentals, flight training, maintenance and a place for transient pilots to access airport services. SASO's typically provide specialized maintenance, or avionics installations and service, or specialize in flight training only.

The Business Plan draft proposes that the nine leaseholders at Reid Hillview could be reduced to two on larger footprints, and the remaining land near Capitol Expressway redeveloped for commercial non-aviation use. The rationale appears to be that there is declining demand for services. The facts establish otherwise. The businesses are successful and are seeking to renew and extend their leases beyond 2021. The Plan further presumes that consolidating the FBO sites would generate the same amount of income as the nine existing leases. This proposal is logistically flawed, as no details are provided for consolidation. The Director of Roads and Airports has said it would likely take several years to get approvals, issue RFP's and manage the consolidation. If the county declines to commit operating the airports beyond 2031, it is unrealistic to believe that a business would commit to a large investment in facilities/building and equipment for such a short period. The consequence of the current proposal would likely result in the closure of existing successful businesses without any realistic prospects of replacing them at the airport.

Further, Mr. Freitas affirmed at the Community Outreach meeting in San Jose on May 23<sup>rd</sup>, 2018 that no attempt has been made to apply to the FAA for permission to develop Reid Hillview airport land for non-aviation use. It should be noted that two prior applications within the past five years were not approved, and the FAA has consistently indicated that non-aviation commercial development on airport aviation-use land will not be permitted. According to FAA manual 5190.6Bn section 22.4, "Once designated for aeronautical use, the property may not be used for non-aeronautical purposes without FAA approval."

### **3. Additional Non-aviation businesses and development at Reid Hillview airport**

The Business Plan draft presumes several other large parcels of land owned by the airport could be developed into commercial non-aviation uses, as airports like Concord and Livermore and San Carlos have done. It is doubtful that these properties would be approved for development by the FAA, City of San Jose zoning and the development completed in less than five to seven years. During this period, the Airport Enterprise Fund would likely continue to run a deficit, requiring a subsidy from county general funds. Again, such a subsidy would be in violation of County policies. In addition, some of the proposed development is within designated "Safety Zones" provided for safe operations within the airport traffic patterns. The FAA is not likely to approve this.

There are opportunities for non-aviation-related businesses to develop at the airports without displacing aviation commercial businesses consistent with FAA policies (FAA manual 5190.6B sect. 22.5), including restaurants, hotels or alternative rental car facilities. These would support aviation activity at the airport, and contribute to the diversity of revenue sources supporting the Airport Enterprise fund. But again, one would assume these businesses would need long-term leases to justify investment.

Further, there are three Little League Fields within the airport boundary. FAA policy 5190.6B, 22.25 d requires that the airport sponsor ensures that the Airport Enterprise Fund is compensated for their use as a sports complex at fair market value. This has not occurred. Freitas stated on May 23rd that the county will begin to transfer funds to the AEF reflecting fair market rental rates for these fields, but no further specifics are included in the plan.

### **4. Business Plan has potentially major negative impact on San Jose State Aviation programs**

San Jose State University transferred its entire Aviation Program in its entirety from San Jose Mineta Airport to Reid Hillview Airport, and has recently signed a lease for a classroom building on the frontage road along Capitol Expressway. In addition to the classrooms, several of the existing FBO's at Reid Hillview airport are providing increasing levels of FAA Part 141 accelerated flight training to San Jose State students, as the school is the only Cal State College in California offering a complete suite of aviation industry majors. Redevelopment of the Swift avenue properties or termination of the leases for existing FBO's/SASO's will negatively impact the ability of San Jose State to meet the increased demands for aviation industry graduates (most of whom have high-paid jobs waiting for them upon graduation) and potentially force the university to shut down its entire program.

### **Conclusion and Recommendations:**

The draft Business Plan as written makes a number of unsupportable presumptions, and also pre-empts significant policy decisions by recommending refusal to build FAA grant funding into the Airport Enterprise Fund revenue stream. The presumptions about alternative revenue streams associated with reducing the number of FBO's and commercial non-aviation development are optimistic at best, and would obligate the county to continue unnecessary long-term subsidies of the Fund until such time as commercial revenue began to flow, which flow is uncertain. Finally, the recommendation to avoid federal grant funding strongly implies a strategy based on lack of commitment to continue operating one or more of the County airports, and without the option of long-term secure leaseholds, it is very unlikely that any business would make the investments contemplated in the Business Plan.

### **Accordingly, the County Airport Commission recommends to the Board of Supervisors that:**

1. The Business Plan as drafted not be approved; and
2. The County accept FAA Grant funding to retire the re-paving loan from the County.

3. The Airport Staff be directed to consult with the FAA and prepare alternate revenue models based on realistic assumptions around FAA grant funding (with associated long-term commitments) and AIP Grant funding (assuming short term operating life until 2031)
4. That the Staff be directed to immediately negotiate lease renewals at least through 2031, to enable existing businesses to have planning stability while policy issues are being addressed
5. That the Board address the issue of whether the County intends to continue operating its two airports past 2031, after full and open discussions with other stakeholders, including the City of San Jose (including the management of SJC Mineta Airport) and emergency services providers.
6. If the County intends to continue operating the airports, then FAA AIP grants should immediately be applied for and accepted, as these grants may be used to repay the loans made for current repaving and help defray airport maintenance costs as identified in the Aries consulting report.

For the Commission,

John B. Carr, Commissioner  
Santa Clara County Airports Commission

June 15, 2018