

**NAPA COUNTY CIVIL GRAND JURY  
2021-2022**



**FINAL INVESTIGATIVE REPORT**

**The Napa County Airport**

**Under the Radar: The Saga to Bring Napa's Airport Into the 21<sup>st</sup> Century**

**June 21, 2022**

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## SUMMARY

The Napa County Airport (Airport)<sup>1</sup> is one of the more significant assets owned by Napa County (County). Located on 800 acres toward the southern end of the County, it is often described as the “Skyport to the Wine Country.”<sup>2</sup> While its runways, taxiways, navigational aids and FAA control tower are worthy of a destination airport, its terminal and fixed base operation facilities (e.g., fueling, maintenance, etc.) appear to be from a bygone era, constrain operations and need to be replaced. At best, imagine an early 1960s airport movie set.

To remedy this situation, the Airport has been engaged in a protracted, and as many interviewees characterized it, non-transparent saga to upgrade and renovate the facilities. Few publicly owned airports use their own funds for such renovation, and instead leverage agreements with Fixed Base Operators<sup>3</sup> (FBO) to modernize facilities. In return for long-term airport leaseholds, FBOs invest the necessary funds to renovate and upgrade airport facilities. In many instances, these FBO investments total between \$30 to \$50 million dollars, or more. FBOs make these substantial investments because the rights associated with fueling and other aviation support businesses are lucrative. Unfortunately, in part, because of the large sums involved, decisions regarding which FBO to award a leasehold become highly politicized.

Despite concerted efforts since at least 2016, the County has not reached an agreement with an FBO to modernize the facilities. There are several reasons why this process has been protracted, many of which the Napa County Civil Grand Jury (Grand Jury) found readily understandable. However, after an extensive investigation,<sup>4</sup> the Grand Jury concluded that a lack of common vision, coupled with a failure to manage expectations and promote transparency (open communication), compounded by alleged misuse of Board of Supervisor (Board) closed sessions and allegations of leaked confidential information, have significantly undermined this process, and aggravated the politicization of it.

As of this report’s date, the outcome of this saga is unknown and whether the County has been able to “land the plane.” We hope it has. Regardless, the County needs to engage in serious

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<sup>1</sup> In general, the Airport is a “general aviation” airport that does not have scheduled commercial air service (e.g., commercial airlines). General aviation includes corporate aviation (company owned and chartered), air tourism (self-flown or chartered), and recreational flying, to name a few types of aviation. *See*, [https://en.wikipedia.org/wiki/General\\_aviation](https://en.wikipedia.org/wiki/General_aviation). The Federal Aviation Administration (FAA), the primary US aviation regulatory body, describes the Airport as national in scope (e.g., “supports the national airport system” and “has high levels of aviation activity with many jets and multiengine propeller aircraft”) and as a “reliever airport” (i.e., capable “of relieving congestion at a commercial service airport” and “provide[s] more general aviation access to the overall community”). *See*, [https://www.faa.gov/airports/planning\\_capacity/categories/](https://www.faa.gov/airports/planning_capacity/categories/).

<sup>2</sup> <https://www.countyofnapa.org/1003/Airport>.

<sup>3</sup> An FBO is “an organization granted the right by an airport to operate at the airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, and similar services.” *See*, [https://en.wikipedia.org/wiki/Fixed-base\\_operator](https://en.wikipedia.org/wiki/Fixed-base_operator).

<sup>4</sup> Since this investigation involves substantive on-going negotiations, aspects of which should remain confidential so as not to undermine the County’s bargaining position, the Grand Jury decided not to detail many of the facts in its possession or use any of the names of the entities or individuals involved, even though many are in the public record.

introspection with respect to this process in order to ensure it never happens again. The County’s “Skyport to the Wine Country” deserves better. And so do Napa and its residents.

## **BACKGROUND**

### **A. Why investigate the FBO process?**

Initially, the Grand Jury thought a review of the Airport was overdue, especially in light of the substantive runway and taxiway upgrade projects that, in general, are well known. The County received in excess of \$17 million in Federal Aviation Administration (FAA) grant funding to accomplish these projects, which in most interviewees’ opinions were well run processes, delivered on time and within budget. However, as the Grand Jury quickly discovered, the Airport was in the midst of another significant “procurement” process which, if successful, would lead to (a) the renovation and upgrade of the terminal and fixed base operation facilities, (b) investments totaling tens of millions of dollars, (c) increased Airport revenues, (d) better customer/passenger services, and (e) a facility worthy of a world class destination airport. That process has been ongoing since at least 2016, but with few tangible signs of progress over the ensuing six years.

Thus, especially after certain initial allegations of non-transparency and leaked confidential information were made, the Grand Jury turned to an examination of the process to upgrade the terminal and fixed base operation facilities in an attempt to understand *why it was taking so long and whether the allegations were credible?* As noted in the Summary, few publicly owned airports use their own funds for such renovation, and instead leverage agreements with FBOs to modernize their facilities. In the case of Napa’s Airport, this requires the County to grant leases to one or more FBOs, wherein the FBOs agree to develop the facilities in accordance with County requirements, in exchange typically for 30 to 40 year leases granting them the right to provide aviation services (e.g., fuel, maintenance, etc.) to Airport users. For its part, the County will derive revenue from the FBO leases, and taxes on fuel sales made by the FBO.

### **B. The role of the FAA and grant assurances**

The Federal Aviation Administration (FAA) is the primary US aviation regulatory authority.<sup>5</sup> Because the County has received FAA grant funding for runway and taxiway improvements, and other enhancements, the process to grant FBO leaseholds is subject to what are termed FAA “grant assurances.”<sup>6</sup> Non-compliance with grant assurances can have serious repercussions for the Airport, including the loss of grant eligibility, stricter scrutiny, and enforcement litigation, which in a severe case might result in the “claw back” of grant funds.<sup>7</sup> While a complicated topic, certain FAA grant assurances are particularly important, since they impact what the County can or cannot do when granting FBO leaseholds.

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<sup>5</sup> See, <https://www.faa.gov/about/mission/activities>.

<sup>6</sup> See, [https://www.faa.gov/airports/aip/grant\\_assurances/](https://www.faa.gov/airports/aip/grant_assurances/).

<sup>7</sup> See, <https://www.kaplankirsch.com/portalresource/lookup/wosid/cp-base-4-36902/overrideFile.name=/Session-04-Understanding-the-Foundation-of-Airport-Law-Grant-Assurances.pdf>.

The FAA grant assurances that are pertinent to this investigation are No. 22 (economic non-discrimination)<sup>8</sup> and No. 23 (prohibition on exclusive rights and “land banking”).<sup>9</sup> Grant assurance No. 22 prohibits the Airport from discriminating against similarly situated FBOs by, for example, providing one with an inferior site or denying benefits to one that it grants the other. Grant assurance No. 23 provides that (a) it is permissible to have only one FBO so long as the Airport takes no action to maintain only one FBO, and (b) if the Airport receives a qualified proposal from another FBO, who will compete with the existing FBO, the Airport must consider the proposal and cannot reject it if it is commercially reasonable. Grant assurance No. 23 also provides that the Airport cannot lease more land to an FBO than it needs or can put to immediate productive use.<sup>10</sup> This practice is termed “land banking.”

These grant assurances have shaped many aspects of the County’s strategy and process to renovate and upgrade the terminal and fixed based operation facilities. Basically, in alignment with grant assurances Nos. 22 and 23, Airport staff envisioned a two FBO airport, wherein both FBOs would have equal 10-acre parcel leaseholds, similarly situated where the existing terminal resides today, with both leases based on comparable terms and conditions. The Airport already has one FBO (the “Incumbent FBO”), whose long-term leases will expire in a few years. The Incumbent FBO has resisted making any major facility investments without a renegotiated long-term lease because it believes that the time left on its leases is insufficient to warrant substantive investments. In addition, at times the Incumbent FBO has sought approval from the County to expand its leasehold to include the entire front of the Airport campus (e.g., from an operational perspective a potentially superior position at the Airport). Since the County has been trying to attract a second FBO, the Airport has been hesitant to conclude any renegotiation of the Incumbent FBO leasehold for fear it might run afoul of grant assurances No. 22 (non-discrimination) and No. 23 (exclusivity). To date, despite several years of trying, the County has not been able to negotiate a lease with a second FBO, nor has it entered into new lease with the Incumbent FBO.

### C. The one or two FBO question

Central to this saga is the question of whether the Airport can commercially sustain a second FBO. This question has been hotly debated for years. If yes, the Airport might conceivably double the investment in the Airport, increase competition, attract more flight operations and passengers, and generate more operational income for the Airport. If no, the County might have been able to renegotiate the Incumbent FBO’s leasehold several years ago, and by today the County would have increased Airport revenues and have a renovated and updated terminal and fixed base operations complex worthy of Napa as a destination.

## **METHODOLOGY**

The Grand Jury’s Airport investigation employed the following methodology:

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<sup>8</sup> See, [https://www.faa.gov/airports/aip/grant\\_assurances/media/airport-sponsor-assurances-aip-2020.pdf](https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip-2020.pdf).

<sup>9</sup> *Id.* See also [https://www.faa.gov/documentLibrary/media/advisory\\_circular/150-5190-6/150\\_5190\\_6.pdf](https://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-6/150_5190_6.pdf).

<sup>10</sup> See also, FAA Order 5190.6B (“Airport Compliance Manual”) at Section 8.9.

- Review of a broad range of pertinent Airport-related information including Board materials and hearing recordings; related Airport Advisory Commission minutes; County documentation and non-County documents, including emails, letters, consultant reports, professional advice, proposals, and presentations.
- Eighteen interviews including:
  - County employees and former employees with knowledge of the Airport and FBO discussions and negotiations;
  - Elected County officials; and
  - Non-County employees with knowledge of the Airport and FBO discussions and negotiations.
- Development of facts, findings, and recommendations.
- Drafting of this Final Report.

## DISCUSSION

### A. Airport Overview

The Airport is operated by the County within a division of the Department of Public Works (DPW) and governed by the Board of Supervisors. The Airport has its origins in the Second World War, which sparked the construction of numerous air defense fields, including the Napa Army Airfield. At the war's conclusion, the Napa Army Airfield was deeded to the County for civil aviation use by the War Assets Administration.<sup>11</sup> In the Airport's early days, the Board created the Airport Advisory Commission (Commission) to "foster development of airport plans and operations."<sup>12</sup>

By 1948 there was one FBO (the "Incumbent FBO") operating at the Airport, which since that time has rebranded itself at least once and has had two successors-in-interest. Thus, the Incumbent FBO traces its lineage almost to the Airport's inception.

The existing terminal was built in the 1950s and modified in the 1960s.<sup>13</sup> The County last completed a Master Plan for the airport in 2007.<sup>14</sup> The Master Plan states, "the existing terminal building will *clearly require replacement*, "the age and layout of the terminal building is increasingly becoming *a constraint*," and "the facility makes a *poor visual impression* as a gateway to the internationally known Napa Valley."<sup>15</sup> The Master Plan also estimated that flight operations

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<sup>11</sup> See, <https://www.countyofnapa.org/1006/Airport-History> and [https://en.wikipedia.org/wiki/Napa\\_County\\_Airport](https://en.wikipedia.org/wiki/Napa_County_Airport).

<sup>12</sup> See, <https://www.countyofnapa.org/DocumentCenter/View/1985/Napa-County-Airport-Master-Plan-PDF>, chapter 1, p. 11. See also, the current Commission Bylaws (<https://www.countyofnapa.org/DocumentCenter/View/5457/Bylaws-Airport-Advisory-Commission-PDF?bidId=>). The Commission is an advisory body and does not make executive or operational decisions regarding the Airport. The Grand Jury relied heavily on Commission meeting minutes which can be found at <https://www.countyofnapa.org/AgendaCenter/Napa-County-Airport-Advisory-Commission-30>. The Grand Jury commends the Commission on the quality and timely posting of its minutes.

<sup>13</sup> See, [https://napavalleyregister.com/news/local/napa-county-continues-airport-renovation-push/article\\_1ce98002-fa0b-50c0-bcc7-7933fbd5df75.html](https://napavalleyregister.com/news/local/napa-county-continues-airport-renovation-push/article_1ce98002-fa0b-50c0-bcc7-7933fbd5df75.html).

<sup>14</sup> See, <https://www.countyofnapa.org/DocumentCenter/View/1985/Napa-County-Airport-Master-Plan-PDF>.

<sup>15</sup> *Id.*

would increase from 126,000 annually to “210,000 operations or a high of 260,000 operations by the year 2021.”<sup>16</sup>

In the early 1960s, the FAA constructed a control tower,<sup>17</sup> and in the 1970s International Air Services Company (IASCO) began joint operations with Japan Air Lines (JAL) to train pilots at the Airport.<sup>18</sup> They operated out of a large building which is relatively modern and located at 2000 Airport Rd. (2000 Building). JAL announced the closure of its training facility in 2010, as part of a bankruptcy reorganization plan.<sup>19</sup> At the time, JAL was responsible for half of all aircraft flights and 15 percent of Airport revenue.<sup>20</sup> JAL, and IASCO’s subsequent departure, has left the 2000 Building unleased to this day.

From a highwater mark of 126,000 flight operations in 2007-2008, flight operations began to drop precipitately;<sup>21</sup> the 2010 decade began with slightly over 56,000 flight operations.<sup>22</sup> In the 2020-2021 fiscal year, flight operations increased only slightly over the preceding decade to approximately 58,000,<sup>23</sup> a substantial deviation from the Master Plan’s estimate of 210,000 flight operations in 2021. In addition, hanger leases decreased during that same period from 153 to 151.<sup>24</sup> Using the FAA’s accepted multiplier of 2.5 passengers per operation (which the Airport has used to estimate users),<sup>25</sup> it is possible, but unlikely, that the Airport’s aggregate passenger volume was as high as 145,000 in 2020-21.<sup>26</sup> The County does not maintain records of how many passengers use the Airport.

Nonetheless, fuel sales, which generate fuel tax revenues for the Airport and also sustain the Incumbent FBO, have been growing. The Grand Jury was told that 2021 fuel sales were approximately 2.7 million gallons, compared to fuel sales of approximately 1.6 million gallons in 2011.<sup>27</sup> This represents approximately a 75% increase over that period.

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<sup>16</sup> *Id.* A flight operation is a landing or takeoff.

<sup>17</sup> *See*, [https://napavalleyregister.com/business/article\\_d36411d5-b811-5428-b834-d2dfe22665c8.html](https://napavalleyregister.com/business/article_d36411d5-b811-5428-b834-d2dfe22665c8.html).

<sup>18</sup> *Id.*

<sup>19</sup> *See*, [https://napavalleyregister.com/news/local/article\\_288bf472-7831-11df-9085-001cc4c002e0.html](https://napavalleyregister.com/news/local/article_288bf472-7831-11df-9085-001cc4c002e0.html).

<sup>20</sup> *Id.*

<sup>21</sup> *See*, <https://www.countyofnapa.org/ArchiveCenter/ViewFile/Item/196>.

<sup>22</sup> *See*, <https://www.countyofnapa.org/ArchiveCenter/ViewFile/Item/744>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *See*, [https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release\\_82919?bidId=](https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release_82919?bidId=).

<sup>26</sup> This number can be deceiving and does not mean that 145,000 tourist or business travelers used the Airport to travel to the County or surrounding environs. Each operation (a landing and takeoff) does not involve a County visitor (e.g., it might involve a student learning to fly, a local pilot flying his or her plane, or a CHP flight).

<sup>27</sup> *See*, [https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release\\_82919?bidId=](https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release_82919?bidId=).

The Airport operates as a County enterprise fund,<sup>28</sup> and as such, it does not use County general funds.<sup>29</sup> From a County asset perspective, one interviewee described the Airport as a hub of significant money. In addition to fuel, maintenance, hangers, flight training and other sources of revenues, the Airport generates approximately 400 jobs (including all of the commercial businesses and governmental entities operating at, or supporting, the Airport) and significant property taxes (approximately \$2.3 million).<sup>30</sup>

That said, while the Airport is solvent based on its significant assets (the Airport Enterprise Fund net position was \$24.1 million as of 2020-21),<sup>31</sup> from an operational perspective it has run a deficit in recent years. Since at least 2007, the operational expenses have exceeded operational revenues (fees, leases and fuel taxes). In the 2020-21 fiscal year, operational expenses were \$4,125,208 and operational revenues were \$1,810,079.<sup>32</sup> While there has been fluctuation, unrestricted net assets, which the County states is a measure of liquidity, have decreased from 115.7% in 2010-11<sup>33</sup> to 39% of the total operating expenditures in 2020-21.<sup>34</sup> As of 2020-21, net unrestricted assets were \$1.6 million.<sup>35</sup>

Outside of the Master Plan, which is 15 years old, the Grand Jury did not find, nor hear, a coherent current vision for the Airport.<sup>36</sup> In fact, the Grand Jury found that members of the Board, senior County leadership and commissioners are not in alignment with respect to the Airport's use, goals and importance to the County. Some interviewees expressed a desire to make broader use of vacant facilities (e.g., support for non-profits), integrate the Airport into broader transportation

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<sup>28</sup> See, <https://www.msrb.org/Glossary/Definition/ENTERPRISE-FUND.aspx> (“a fund established by a governmental entity to account for operations of an enterprise activity. Enterprise funds generally are segregated as to purpose and use from other funds and accounts of the governmental entity with the intent that revenues generated by the enterprise activity and deposited to the enterprise fund will be devoted principally for funding all operations of the enterprise activity”).

<sup>29</sup> A corollary to this is that non-property tax funds must remain in the Airport enterprise fund and are not for general fund use. See also, [https://www.faa.gov/airports/aip/grant\\_assurances/media/airport-sponsor-assurances-aip-2020.pdf](https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip-2020.pdf) (Grant assurance No. 25 [Airport Revenues] provides that “all revenues generated by the airport and any local taxes on aviation fuel . . . will be expended by it for the capital or operating costs of the airport.”). While not the subject of this investigation, some interviewees noted that senior County officials have repeatedly queried how the County can acquire non-property tax funds generated by the Airport for general fund use, especially if the Airport attracts increased revenues through renovation of its facilities.

<sup>30</sup> See, <https://www.countyofnapa.org/1003/Airport#:~:text=Revenue%20Napa%20County%20Airport%20tenants%20provide%20406%20jobs,with%20Federal%20and%20State%20grants%20for%20capital%20improvements>.

<sup>31</sup> <https://www.countyofnapa.org/ArchiveCenter/ViewFile/Item/744>.

<sup>32</sup> *Id.*

<sup>33</sup> <https://www.countyofnapa.org/ArchiveCenter/ViewFile/Item/197>.

<sup>34</sup> <https://www.countyofnapa.org/ArchiveCenter/ViewFile/Item/744>.

<sup>35</sup> *Id.*

<sup>36</sup> Several interviewees indicated there was a lack of vision for the Airport and referenced other airports as examples to which the County should aspire. Truckee and Aspen were the most referenced airports. In the last few years, Aspen went through a process to develop a vision (see <http://389kndfjeyc2zewjj3xg9k4w-wpengine.netdna-ssl.com/wp-content/uploads/2022/04/ASE-VC-Final-Recommendations.pdf>). While a review of the vision document shows that Aspen is different in many respects to Napa Airport, it does provide a potential model for how to develop a vision and engage the larger community.



planning, attract “hop on jet service” carriers (e.g., Jet Suit X), or even establish the Airport as a special district, outside the control of Public Works. That said, all interviewees agreed that Airport’s renovation is necessary, and also understood the Airport’s potential to attract investment and additional revenue.

#### B. 2016: The Incumbent FBO’s proposal

From an operational perspective, one of the primary reasons to renovate and upgrade the Airport terminal and fixed based operations is to increase Airport revenues. While there were proposals prior to 2016, the current process has its roots in a 2016 proposal from the Incumbent FBO. In August 2016, the then current Airport Manager discussed with the Board the Incumbent FBO’s plans to improve the Airport.<sup>37</sup> The Incumbent FBO proposed a variety of improvements, including renovating the exterior of the existing terminal (which housed a restaurant, administrative offices and other spaces), constructing a new terminal for fixed-base operations and a new maintenance building, and relocating the self-service fuel facility.<sup>38</sup> The Incumbent FBO envisioned leasing the space today that encompasses the complete front of the Airport, where the current terminal resides. At the time, it was estimated that improvements would take 2-3 years.<sup>39</sup>

As described to the Board, the proposal’s benefits were: (a) an improvement of the Airport facility and the customer experience, (b) an increase in Airport revenues, (c) a consolidation of the leases between the County and Incumbent FBO, and (d) the Incumbent FBO’s funding of the improvements.<sup>40</sup> The proposal was well received by the Board.<sup>41</sup>

However, as one interviewee suggested, everything regarding FBO decisions becomes politicized. Some senior County officials (elected and non-elected) fixated on the potential significant monetary streams involved.<sup>42</sup> One interviewee even suggested that funding opportunities blinded them. Conversely, FBO’s were aggressive in trying to influence decisions given the potential revenue involved. An interviewee noted that if an FBO was the sole provider of aviation fuel at the Airport (effectively a monopoly), there were few constraints on what could be charged for fuel. Interviewees described individuals and entities impacted by decisions regarding the FBO concessions as influential, able to deal directly with Board, County and State Officials, sometimes even circumventing contracting processes meant to limit interaction.

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<sup>37</sup> See, [https://napa.granicus.com/player/clip/3419?view\\_id=2&meta\\_id=281078&redirect=true](https://napa.granicus.com/player/clip/3419?view_id=2&meta_id=281078&redirect=true); see also, <https://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=4564>.

<sup>38</sup> See, [https://napavalleyregister.com/news/local/supervisors-like-proposed-stylish-makeover-of-napa-county-airport/article\\_e84576f0-d15a-5fcf-b492-4392a1f3756a.html](https://napavalleyregister.com/news/local/supervisors-like-proposed-stylish-makeover-of-napa-county-airport/article_e84576f0-d15a-5fcf-b492-4392a1f3756a.html).

<sup>39</sup> *Id.* The Incumbent FBO CEO said, “We’re ready to go . . . We have the architects, we have the designers, we have builders standing by.”

<sup>40</sup> See, [https://napa.granicus.com/player/clip/3419?view\\_id=2&meta\\_id=281078&redirect=true](https://napa.granicus.com/player/clip/3419?view_id=2&meta_id=281078&redirect=true).

<sup>41</sup> *Id.* The Commission had already endorsed the proposal at its July 2016 meeting, with its Chairman stating, “unfortunately, this has been well overdue. We think it’s a great idea.”

<sup>42</sup> As an example, a letter from a national FBO summarized the potential investment and revenues in the Airport as follows: direct payment to the County of \$50 million over 30 years, indirect benefit to the County of \$65 million, and \$14.25 million in facility investment.

Sometime in 2016 or 2017, the County hired a consulting firm to review the Incumbent FBO's proposal, and, for the first time of which the Grand Jury is aware, the viability of a second FBO. An operational audit of the Airport (including the Incumbent FBO) was also conducted. The consulting firm produced two reports: a confidential report which the Grand Jury believes addressed the Incumbent FBO proposal and the viability of a second FBO, and a publicly released operational audit of the Airport. One interviewee recalled that the consulting firm concluded that while the Incumbent FBO's proposal offered an increase in what it paid the County for its leases, the amount was objectively less than the true value of the leases. With regard to negotiations with the Incumbent FBO, the County placed them on hold, while it sought to see whether other FBOs might be interested in a second Airport leasehold.

### C. Transparency concerns begin

The County's hiring of the consultant aggravated the Commission, which felt it should have been consulted about the decision and expressed its view that it was entitled to review the results of the confidential report.<sup>43</sup> Nonetheless, access to the report was denied. One interviewee felt that nothing was transparent. As stated in meeting notes, the County informed the Commission, "that real property negotiations were only under the purview of the [Board] and any information disseminated outside of Closed Sessions would most likely compromise the County's negotiating power. . . [and that there] is heightened concern due to the fact that one of the Commissioners represents the [Incumbent FBO] in the negotiations."<sup>44</sup> Commenting on this period, another interviewee acknowledged the need for confidentiality in certain communications and the potential conflict of interest (e.g., a Commissioner who was also representing the Incumbent FBO), yet analogized the County's position to an impenetrable black hole.

Over time, the need for confidentiality in real estate negotiations became a constant answer to inquiries about the status of the County's FBO process. All Grand Jury interviewees acknowledged the need for lease negotiation confidentiality so as not to disadvantage the County; yet many thought the County could have been more forthcoming, and some thought the Commission should have been more engaged.<sup>45</sup>

The Board also used closed sessions, which kept FBO discussions from public view. The Brown Act requires all meetings of a public agency to be conducted in open session, but there are a handful of exemptions, including litigation strategy, settlement offers, personnel matters, threats, and real

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<sup>43</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Agenda/\\_10022017-443](https://www.countyofnapa.org/AgendaCenter/ViewFile/Agenda/_10022017-443). Legally, the County is entitled to withhold confidential reports from an advisory committee. However, in this case, the question is whether the County has been too aggressive in its confidentiality stance? As noted, sharing summarized data or aspects of what the County learned regarding the core issue of whether the Airport could support two FBOs may have alleviated some transparency concerns and might also have been appropriate under applicable law.

<sup>44</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_10022017-443](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_10022017-443).

<sup>45</sup> One senior county official even suggested that perhaps certain Commission members could have been directly involved in County FBO discussions or proposal feedback, even though they would have had to maintain confidential what they heard or read. Moreover, one interviewee said that in hindsight, as opposed to maintaining a hardline regarding confidentiality, the County should have had more formal check-ins with stakeholders, provided periodic reminders of strategic goals, stated where the County was in the process, and engaged in more proactive public outreach. Instead, stakeholders felt alienated, rumors and allegations flew, and relationships frayed.

estate negotiations as permitted closed session topics. However, with respect to real estate negotiations, such closed sessions are limited, in general, to discussion of price and payment (with the exception of the final terms, which must be publicly communicated).<sup>46</sup> In addition, unless the Board decides to make discussions public, participants in those meetings must keep discussions confidential (subject to both civil and criminal penalties).<sup>47</sup>

Several interviewees (some with firsthand knowledge) expressed the belief that closed sessions were overused; sometimes inappropriately (e.g., more than price and payment discussions were involved). Multiple interviewees believed that sometimes closed sessions were used to push particular Board member agendas or air significant differences amongst the Board regarding how to proceed, as opposed to stating positions publicly and giving staff direction openly and transparently. One interviewee indicated that because certain decisions were made in closed session and not in public, County staff thought they understood their instructions, only to be later undermined (and with no recourse to a public record). Another interviewee complained that the County interpreted rules aggressively when it came to closed sessions. More troubling, as set forth below, some interviewees alleged that confidential information was inappropriately leaked from closed sessions, ending up in the possession of the FBOs negotiating with the County, and sometimes undermining staff and other Board members.

#### D. 2017-19: Shifting process delays the RFP release

Throughout 2017 and 2018, the momentum to acquire a second FBO took on steam. In January 2018, Commission meeting notes state that, “the Board [is] possibly looking at having more than one FBO and *having no documentation as to why*.”<sup>48</sup> The Grand Jury was told by several interviewees that even to this day they have never seen data-driven information supporting a second FBO.<sup>49</sup> However, over the course of its investigation, the Grand Jury became aware of competing analyses from the County and Incumbent FBO.<sup>50</sup> The County’s position was that the

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<sup>46</sup> “[A] local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.” Cal. Gov. Code § 54956.8 Ch. VI. It is the Grand Jury’s understanding that when deciding whether to use a closed session, the Brown Act should be narrowly construed. See <https://oag.ca.gov/system/files/media/the-brown-act.pdf>, p. 30.

<sup>47</sup> Cal. Gov. Code § 54963 provides that confidential information that is acquired by attending a proper closed session cannot be disclosed to a person not entitled to receive it unless the disclosure is authorized by the legislative body.

<sup>48</sup> [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_01082018-491](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_01082018-491).

<sup>49</sup> Typically, according to interviewees, current and potential fuel sales are key to determining the viability of FBOs at a given airport, and that one can use benchmark data from similarly situated airports to understand whether an airport can sustain more than one FBO (or the required aviation traffic to support more than one FBO). In this case, what makes the FBO question difficult is the Airport straddles the fence: in 2021 fuel sales (approximately 2.7 million gallons) were slightly below the threshold (3 million gallons per year) for most 2 FBO airports. However, at the time of this initial discussion (2017-2019), the Airport was significantly below 3 million gallons per year. That said, the Grand Jury does not dispute the County’s perspective, as detailed below, that the market is determinate (e.g., whether a second FBO executes a leasehold at the Airport and is able to sustain itself through fuel sales).

<sup>50</sup> The Grand Jury read the Incumbent FBO’s assessment, which was based on a large public accounting entity report that found a second FBO would generate inadequate returns on its investment and that *the Airport would be the lowest traffic general aviation airport in California to have a two FBOs*.

analyses of its consultant were confidential. Perhaps some of it was confidential, but after reviewing the analysis in its possession (including information later contained in the Request for Proposal referenced below), the Grand Jury questions why summarized data that supported the County's assertions was not shared with the Commission and/or the public earlier. Surely, some of the information could have been summarized and disclosed in a fashion that did not jeopardize negotiations. Instead, interviewees, who did not have a conflict of interest in the FBO decision, indicated that they felt the decision to pursue two FBOs was pulled out of thin air.

A new Airport Manager updated the Board in August 2018 regarding FBO plans,<sup>51</sup> stating that the County should let the market determine the Airport's FBO potential through a competitive Request for Proposal (RFP).<sup>52</sup> One interviewee characterized the RFP process as a proof-of-concept approach.<sup>53</sup> In fact, the County was under no obligation to conduct an RFP since the contract involved a leasehold. Also, once the RFP process was complete and a "winner" identified, the County's strategy was to negotiate the leases with the Incumbent FBO<sup>54</sup> and the prospective new FBO concurrently, in order to keep them in synch.<sup>55</sup>

In hindsight, there were perhaps two flaws with the process. *First*, while it is reasonable to let market forces dictate the outcome of the FBO issue, it only works if senior County leadership is not simultaneously trying to influence the result. Because there was no common vision for the Airport, factions within senior County leadership continued to advocate for either a one FBO or two FBO Airport, that, as detailed below, undermined the "proof of concept" approach. *Second*, the decision to conclude the RFP process and then bring both the prospective FBO and Incumbent FBO to a position where the County could concurrently negotiate the two leases based on similarly situated leaseholds, with similar terms and conditions, proved to be a very complicated goal. The impact of that decision, while understandable, meant there were no increases in lease payments or substantial investments in the terminal or fixed base operations for over six years (2016 to 2022).

In addition, the County was not prepared to release an RFP. An impediment to the RFP's release was the Airport's outdated Primary Management and Compliance Documents (PMCDs), which inexplicitly *had not been updated for approximately four decades*. The PMCDs are comprised of the "Rules and Regulations, General Aviation Minimum Standards, General Aviation

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<sup>51</sup> See, [https://napa.granicus.com/player/clip/4176?view\\_id=2&meta\\_id=340361&redirect=true](https://napa.granicus.com/player/clip/4176?view_id=2&meta_id=340361&redirect=true).

<sup>52</sup> "A request for proposal (RFP) is a business document that announces a project, describes it, and solicits bids from qualified contractors to complete it. Most organizations prefer to launch their projects using RFPs, and many governments always use them. When using an RFP, the entity requesting the bids is responsible for evaluating the feasibility of the bids submitted, the financial health of the bidding companies, and each bidder's ability to undertake the project." <https://www.investopedia.com/terms/r/request-for-proposal.asp>.

<sup>53</sup> One interviewee stated that staff was always clear that they did not know whether the Airport would support a second FBO, and that the only way to know was through an RFP process.

<sup>54</sup> At this point, a non-California domiciled company acquired the Incumbent FBO. Some interviewees suggested that the reason Incumbent FBO ownership changed twice during the 2016 to 2022 period was, in part, due to the inability to renegotiate existing leases. After each change in ownership, the Incumbent FBO reaffirmed its desire to renegotiate its leases and make significant investments in Airport facilities.

<sup>55</sup> The primary reason for negotiating the leases concurrently is to ensure that the leases negotiated were materially the same (and not subject to a discrimination challenge under FAA grant assurance No. 22).

Leasing/Rents and Fees Policy, and Development Standards” that govern the Airport.<sup>56</sup> Since the PCMDs set the minimum standards that entities operating at the Airport must meet, County staff believed updated PCMDs were a prerequisite to the RFP’s release.<sup>57</sup> One interviewee characterized the project to update the PCMDs as very significant. Nonetheless, at the time, it was estimated that the PCMDs would be ready for Board approval in January 2019, after which release of the RFP would immediately occur.

County staff updated the Board again in February 2019.<sup>58</sup> The PCMDs were still not complete, and as a consequence the RFP had not been released. Staff did articulate the RFP’s goals as follows: (a) provide an open and fair process, (b) demonstrate the County’s proactiveness in not granting exclusive rights, (c) gain valuable information regarding market rates, (d) place the County in a strong negotiating position, and (e) determine the possible success of multiple FBOs.<sup>59</sup> Based on a revised March 2019 RFP release date, it was estimated that the Board might make an RFP award in the June 2019 timeframe. Board members asked *why the process was taking so long* and whether the County had *any metrics to judge whether the Airport could sustain two FBOs*. The Board also decided to exclude the Incumbent FBO from the RFP process.<sup>60</sup> At the conclusion of the public hearing, all Board members were, at least publicly, in favor of the RFP approach (which was premised on a two FBO Airport).

In May 2019, the updated PCMDs were finally approved by the Board.<sup>61</sup> The undertaking to update the PCMDs took significantly more effort and time than initially thought. In addition, during the same month, the Commission’s bylaws were amended weakening its role.<sup>62</sup> From the County’s perspective, this was an attempt to address, in part, what it perceived as potential Commission member conflicts of interest.<sup>63</sup> However, one interviewee’s comments summed-up what the Grand Jury heard often: it was unknown what the Commission’s role was, that it had no

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<sup>56</sup> See, <https://www.countyofnapa.org/2459/Airport-Policies-PMCDs>.

<sup>57</sup> See also Airport Commission notes regarding the importance of PMCDs in setting a foundation for the Airport and minimum standards upon which an RFP could be based upon. The Commission did play a role in the revised PMCDs.

([https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_10012018-660](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_10012018-660)).

<sup>58</sup> See, [https://napa.granicus.com/player/clip/4272?view\\_id=2&redirect=true](https://napa.granicus.com/player/clip/4272?view_id=2&redirect=true).

<sup>59</sup> See, <https://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5789>.

<sup>60</sup> The decision to exclude the Incumbent FBO from the RFP process was based, in part, on a two reasons: (a) if the Incumbent FBO received the highest score and “won” the RFP process it might result in granting exclusivity to the Incumbent FBO, and (b) it would be easier to enforce PMCDs if there were two FBOs at the Airport (e.g., the Airport can act against an FBO when it has two and is not dependent on just one FBO). See, [https://napa.granicus.com/player/clip/4272?view\\_id=2&redirect=true](https://napa.granicus.com/player/clip/4272?view_id=2&redirect=true). However, interviewees describe continued pressure from some Board members and senior County officials to let the Incumbent FBO participate in the RFP or begin immediate renegotiations of its leases.

<sup>61</sup> See, [https://napa.granicus.com/player/clip/4322?view\\_id=2&redirect=true](https://napa.granicus.com/player/clip/4322?view_id=2&redirect=true).

<sup>62</sup> See, <https://www.countyofnapa.org/DocumentCenter/View/5457/Bylaws-Airport-Advisory-Commission-PDF?bidId=>.

<sup>63</sup> The Grand Jury did see documentation where one Commissioner advocated on behalf of a prospective FBO, and in another case, prior to the amendment of the bylaws, another Commissioner was associated with the Incumbent FBO.

power and that its advice was often ignored. It seems clear that the Commission’s original purpose of fostering development of airport plans and operations was an aspiration of the past.

By early August 2019, the RFP had still not been released. Further the timeline for concluding the process had been lengthened by a year because of the decision to perform an environmental assessment.<sup>64</sup> Listening to the hearing, the decision to complete an environmental assessment prior to the RFP due date appears reasonable. However, *similar to the failure to maintain updated PCMDs, why had not the need for an environmental assessment come-up previously, given its severe impact on the timeline?* The need to complete both PCMDs and the environmental assessment, and the significant change in RFP timelines, made it difficult for the County to manage expectations and adversely impacted perceptions of transparency.

Despite the Board’s public support for the RFP, which was focused on acquiring a second FBO, interviewees spoke of pressures from some Board members (and Senior County leaders) who were convinced the Airport was a single FBO Airport. Board members “invited” staff to meetings with potential FBOs, who continued to advocate for a single FBO approach, making the process more difficult for staff (e.g., they often felt ignored or their advice discounted).<sup>65</sup> As described to the Grand Jury there was a great deal of politics underlying the process. Some Board members did not seem to want a thorough RFP process and appeared to have a predetermined view of the outcome. Other Board and senior County officials wanted to see the draft RFP repeatedly, questioning provisions about which staff already thought a conclusion had been reached.<sup>66</sup> Another interviewee described how even legal advice given by the County Counsel regarding FAA grant assurances was discounted by certain Board members based on information provided by prospective FBO’s. The Grand Jury concluded that notwithstanding public support for the RFP, that was based on a two FBO Airport, the Board and Senior County leaders were not in agreement as to the process or whether the Airport could sustain a second FBO.

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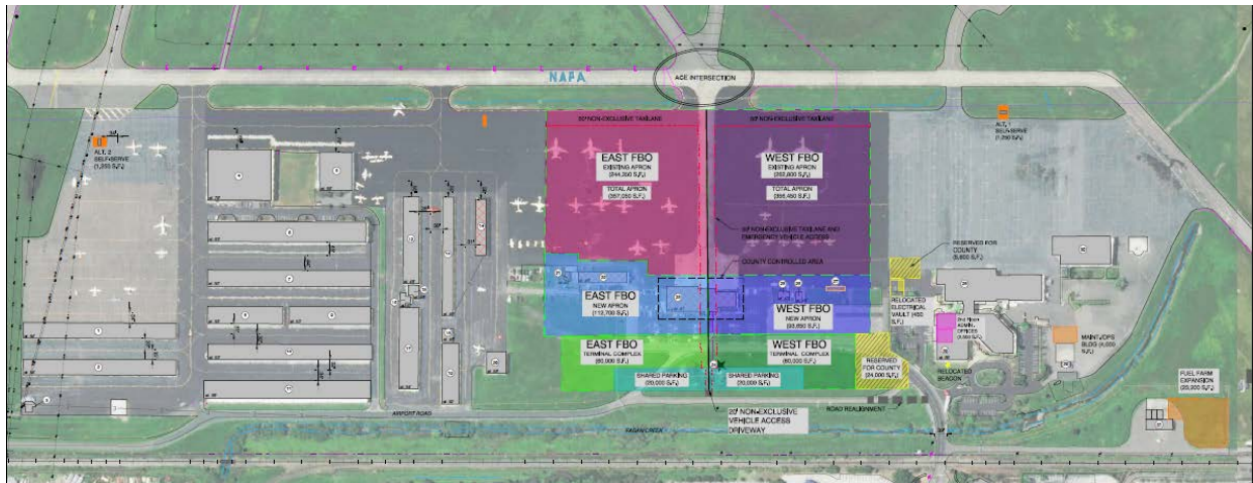
<sup>64</sup> See, [https://napa.granicus.com/player/clip/4408?view\\_id=2&redirect=true](https://napa.granicus.com/player/clip/4408?view_id=2&redirect=true). During the August 2019 Board meeting, staff advised the Board that the RFP process would take approximately a year to complete, with an award possible in the summer 2020. The reason given for the delay was the decision to complete an environmental impact assessment prior to the receipt of FBO proposals. Staff argued that this would result in more accurate proposals since the environmental assessment would provide respondents with a better understanding of what investments they might need to make. County staff was concerned that RFP respondents might seek to amend their proposals if the environmental assessment occurred after their proposals were submitted. Board members questioned that again and asked whether other counties had taken a similar approach? No other counties were identified, and ultimately the Board agreed to the elongated timeline.

<sup>65</sup> One interviewee recalls being in a meeting organized by a Board member prior to the release of the RFP with the entity below referred to as Respondent One. The entity stated that it would not compete in a two FBO market.

<sup>66</sup> In general, one interviewee described the working environment with senior County non-elected leadership as involving chaos and conflict. While not the subject of this report, numerous interviewees painted a similar picture, described working conditions at the County as difficult and called the Grand Jury’s attention to significant staff turnover caused by these conditions, and unrelated to Covid or other external factors like outside opportunities.

E. 2019-21: An unsuccessful and undermined RFP process

The RFP was finally released August 29, 2019, with responses due in March 2020.<sup>67</sup> As set forth in the RFP, one key goal was to, “maintain compliance with FAA Grant Assurances, which includes encouraging on-field business competition.”<sup>68</sup> To that end, the RFP envisioned two FBOs occupying similar 10-acre leaseholds at the front of the Airport (where the current terminal resides). The Incumbent FBO would occupy the East FBO leasehold, and the RFP “winner” would occupy the West FBO leasehold.<sup>69</sup>



Due to Covid, the RFP response due date was extended to July 2020.<sup>70</sup> The Grand Jury understands that, despite numerous FBO inquiries and participation in mandatory bidder meetings, the County only received two RFP proposals that were considered seriously.<sup>71</sup> For purposes of this report, the proposal respondents are referred to as Respondent One and Respondent Two. Several interviewees described Respondent One, which ran multiple single airport FBO operations in California, as only feigning interest in being the second FBO at the Airport and as being very politically connected, with some Board members and State officials advocating for it. According to interviewees and a review of documents, Respondent One made two proposals: an “enhanced plan” in which it developed both East and West sites (similar to certain Incumbent FBO proposals), and a “base plan” which was for the West FBO site (which was in alignment with RFP requirements). Comparatively, interviewees described Respondent Two as willing to meet the RFP requirements, but after careful County consideration, as lacking a track record and sufficient assets to be a successful second FBO at the Airport.

<sup>67</sup> See, [https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release\\_82919?bidId=](https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release_82919?bidId=).

<sup>68</sup> *Id.*

<sup>69</sup> See, <https://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5789>. The Grand Jury was informed that sometime late in the process (after the termination of the RFP detailed later in the report) the designations were changed to South and North FBO leaseholds. To avoid confusion, the Grand Jury decided to refer to them as the East and West FBO leaseholds for purposes of this report.

<sup>70</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_06012020-900](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_06012020-900).

<sup>71</sup> Another proposal received by the County was eliminated immediately because it was described as very weak.

In discussing issues with the RFP process, one knowledgeable interviewee asserted that the County failed to shut the door completely on the opportunity for an FBO to be the sole FBO at the Airport, which in their estimation made a mess of the process. As a result, the County received proposals like Respondent One's enhanced plan (similar to some of the plans put forth by the Incumbent FBO). The enhanced plan would have had the effect of locking down the entire front of the Airport in favor of one FBO (e.g., an opportunity for a monopoly referenced by another interviewee). While the RFP appeared clear in offering only the West FBO leasehold,<sup>72</sup> multiple interviewees indicated that senior County officials (both elected and non-elected) may have intentionally or unintentionally encouraged, or at least not precluded, "enhanced" proposals."<sup>73</sup>

It is notable that when the RFP proposals were submitted, the Incumbent FBO sent a letter from its counsel to the County, asserting that at a May 26, 2020 meeting, a senior County executive requested a complete campus development, which was contrary to the County's espoused strategy.<sup>74</sup> The Incumbent FBO complained in the letter that after investing significant resources in the development of the proposal, County staff decided that the proposal could not be considered. Staff was concerned that it undercut the RFP's two FBO model and potentially ran afoul of FAA grant assurances. The Incumbent FBO further referenced a letter to the County from Respondent One purporting to advocate for a single FBO operation at the Airport.

More seriously, multiple interviewees expressed their frustration that interested FBOs, or their representatives, were in possession of leaked information. Interviewees spoke about how bidders always appeared to know things they should not and were a step ahead of County staff involved in the discussions. One non-County interviewee *even acknowledged receipt of information that they should not have had* and questioned the process' integrity as a result. As articulated to the Grand Jury, the effect of the leaks was to elongate the process and make it more difficult to keep the process completely above board.

As of October 2020, the County had not brought the RFP process to a conclusion.<sup>75</sup> Roughly at the same time, according to interviews and government emails, a business development office within the California state government executive branch (CEB) injected itself into the Airport FBO discussion in favor of Respondent One, and against the Incumbent FBO. CEB alleged in an email that the Incumbent FBO's proposal was inferior and that County staff, "*with limited Board support,*" was giving deference to the Incumbent FBO. CEB also said it understood the County would only support one FBO (interestingly, referencing the Incumbent FBO's study). CEB further

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<sup>72</sup> See, [https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release\\_82919?bidId=](https://www.countyofnapa.org/DocumentCenter/View/14227/RFP-FBO-Release_82919?bidId=) ("The County will require the Successful Respondent to lease the entire area labeled 'West FBO'").

<sup>73</sup> It is not the Grand Jury's intention to imply that senior County officials' actions were not well intentioned. We know that there were, and continue to be, serious discussions regarding the viability of two FBOs, and that even if a second FBO is selected and begins operations, whether it will result in both FBO's businesses struggling or even failing. Instead, the point is once the RFP strategy was determined, all County parties needed to support it, both in public and private.

<sup>74</sup> By complete campus development, the Incumbent FBO meant at least both the East and West FBO leaseholds.

<sup>75</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_10052020-949](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_10052020-949).



*alleged that two Supervisors and the County Executive supported its position (e.g., backing a single FBO airport in favor of Respondent One). County staff objected to CEB's characterizations.*

In February 2021, County staff provided the Commission with an update on the RFP, stating it had “selected [an FBO] from the RFP, while simultaneously negotiating with [the Incumbent FBO] ...that scheduled reoccurring future meetings have also been established with the goal of bringing two leases to the [Board] for their approval within the next 4 months.”<sup>76</sup> This goal would have placed Board approval in the May 2021 timeframe (21 months after the release of the RFP). During that meeting, according to the notes, Commissioners questioned whether the Commission had any role, and asserted they were “learning more about things after they happen.”<sup>77</sup> As in past meetings, the Commission was told that the RFP process involved real estate matters that needed to remain confidential. Based on interviews, the Grand Jury believes that Respondent One was the selected FBO.

In an April 2021 letter to the County Executive Officer and Board, Respondent One unexpectedly withdrew its FBO proposal stating that the “poor economics in the two-FBO model are compounded by onerous lease language.” Respondent One recapped how it had submitted two proposals: the enhanced model wherein it would develop the complete campus (e.g., similar to certain Incumbent FBO proposals) and one for the West FBO leasehold. The letter states that the County chose Respondent One's West FBO proposal and that “market economics simply do not support two healthy FBOs.” The letter further states that, “*both the Incumbent FBO and Respondent FBO believe a single FBO is best for all stakeholders,*” and Respondent One threw its backing behind the Incumbent FBO proposal.

Interviewees professed various theories about why Respondent One withdrew its proposal and backed the Incumbent FBO, including that (a) Respondent One knew it would not be the sole Airport FBO (and that the onerous lease language was a cover), (b) Respondent One was paid or accommodated somehow to withdraw (the Grand Jury saw no evidence of payment or an accommodation), and (c) Respondent One knew that the Incumbent FBO was going to be acquired by a significantly larger FBO later in the year and that Respondent One thought it would be unable to compete.<sup>78</sup> In the end, the Grand Jury was not able to determine why Respondent One threw its support behind the Incumbent FBO after withdrawing.

#### F. 2021-22: A new process and further concerns regarding transparency and integrity

The Grand Jury has learned that after a closed Board hearing on June 21, 2021, the County *canceled the RFP in favor of direct negotiations with other FBOs* who had expressed interest but

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<sup>76</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_02012021-987](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_02012021-987). The County staff thought it was important to negotiate the leases concurrently so that they would be similar, and abide by FAA grant assurances (e.g., not result in unfairly discriminate against one or the other FBOs).

<sup>77</sup> *Id.*

<sup>78</sup> If true, Respondent One would have known of the acquisition significantly before it occurred. The withdrawal was in April, and the Incumbent FBO was acquired in November.

not submitted proposals as part of the RFP process.<sup>79</sup> Some interviewees asserted it was some time before they realized the process had changed, and that it was additional proof that the process lacked integrity. From their perspective, the County switched processes without explanation based on behind the scenes dynamics that were impossible to access or understand. The approach was also described as dysfunctional. To be fair, as of June 2021 (almost two years after the release of the RFP) there were no viable RFP respondents left.

Some interviewees expressed the opinion that failure of the RFP process should have been sufficient evidence that the Airport could only sustain one FBO (and satisfy FAA grant assurance requirements). After all, that was one of the articulated purposes for the RFP process (e.g., determining the possible success of multiple FBOs).<sup>80</sup> Other interviewees indicated that the issue was more complicated because two FBOs not involved in the RFP process had expressed interest.<sup>81</sup> Under its grant assurances, the County was probably obligated to consider the two FBOs (one of whom was a national FBO entity (Respondent Three)), provided they submitted commercially reasonable proposals.

The County began direct discussions with Respondents Three and Four during the late summer and fall of 2021; both had submitted proposals to the County. The Incumbent FBO also engaged with the County regarding developing beyond its East FBO site, including the West FBO site and the 2000 Building (e.g., the complete campus proposal, which the County had previously rejected). It is the Grand Jury's understanding that in September 2021, the County expressed interest in discussing the Incumbent FBO's proposal with the FAA.

Also, during a Commission meeting in August 2021, one substantial non-FBO business at the Airport expressed concern regarding its business' future given the uncertainty surrounding the FBO RFP process. Quoting from the meeting notes, the business observed "that no information is available [regarding the] FBO RFP process."<sup>82</sup> In response, a County representative indicated, "that multimillion dollar contracts are not negotiated in the public domain."<sup>83</sup> One interviewee described Commission meetings during this period as unprofessional and tense.

In October 2021, the Airport Manager discussed the current FBO process with the Commission, and introduced an aviation attorney, who provided a summary of FAA grant assurances (exclusivity, economic non-discrimination, land banking, etc.), the background of the RFP process, and the confidentiality required in real property negotiations.<sup>84</sup> During the meeting it was asked, as set forth in the notes, "why the County wouldn't make a deal with the current FBO due to the other entities backing out and therefore creating a playing field that they can then offer to any other

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<sup>79</sup> It is unclear to the Grand Jury how the additional FBOs came forward (whether the interest was unsolicited or solicited by the County).

<sup>80</sup> See, <https://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5789>.

<sup>81</sup> In accordance with FAA grant assurances, if the County receives a qualified proposal by another FBO, who will compete with the existing FBO, it must consider it and cannot reject it if it is commercially reasonable.

<sup>82</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_08022021-1081](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_08022021-1081).

<sup>83</sup> *Id.*

<sup>84</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_10042021-1104](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_10042021-1104).

interested entities moving forward.”<sup>85</sup> A non-FBO business indicated it was, “unable to plan [its] future at the [Airport] without knowing what businesses are going to be here or who they’ll be dealing with . . . [and] that the current businesses at the Airport are being discriminated in this process.”<sup>86</sup>

Notwithstanding the fact several years had passed with no additional revenue, another County representative told the Commission that if, “the County accepted the offer . . . from the Incumbent FBO in 2016, the County would have lost tens of millions of dollars.”<sup>87</sup> Putting aside FAA grant assurance restrictions, since the County had not successfully negotiated a second FBO leasehold, including assumptions regarding the substantial investments that would be associated with it, there was scant evidence of the County’s assertion regarding lost money at that point.<sup>88</sup>

In late November 2021, the Incumbent FBO was acquired for the second time since 2016, this time by a much larger national FBO organization,<sup>89</sup> which is a direct competitor of Respondent Three. The new owners of the Incumbent FBO reaffirmed that it was, “eager to pursue a long-term lease and build new FBO facilities.”<sup>90</sup>

On January 24, 2022, the day before another closed Board session to discuss the FBO process, the County received a response to its queries from the FAA regarding the Incumbent FBOs enhanced campus proposal in light of the current situation.<sup>91</sup> The FAA describes the following facts, along with its conclusion:

The [FAA] understands that [the County] issued a [RFP] for prospective tenants interested in operating a second [FBO] operation on the [Airport]. As a result of the RFP, three parties expressed interest in the airport. Additionally, the incumbent FBO also submitted proposals which include options to develop both leaseholds presented in the RFP. *Subsequent to the RFP, the County received two additional proposals* from entities who are actively pursuing the opportunity to compete with the existing FBO.

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Based upon our understanding of the facts provided, *the FAA may have significant concerns should the incumbent FBO secure both leaseholds*

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Conversely, a few interviewees discussed the lost opportunity cost of not renegotiating the Incumbent FBO’s leaseholds years before, which presumptively would have been at market rates and included renovation of facilities. Depending on how it is done, and providing that other FBOs are not excluded, it is the Grand Jury’s understanding that renegotiation of the Incumbent FBO’s leaseholds does not per se violate FAA grant assurances.

<sup>89</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_12062021-1141](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_12062021-1141).

<sup>90</sup> *Id.*

<sup>91</sup> Letter dated January 24, 2022, from FAA, San Francisco Airports District Office, to Napa County Airport Manager.

*identified in the RFP without the County engaging in good faith negotiations with other interested parties* (emphasis added).

The Incumbent FBO and Respondent Three submitted updated proposals in early 2022. Again, the Incumbent FBO submitted two options, one for the complete campus (e.g., both FBO East and West leaseholds and the 2000 Airport Road Building [Option 1], and the other for the East FBO position and the 2000 Airport Road Building [Option 2]). According to interviewees who were present, the night before the closed Board meeting on January 25, 2022, the Incumbent FBO was convinced to withdraw Option 1 during a dinner meeting. It is unclear whether the dinner participants knew of the FAA letter.

The Board held a closed session on January 25, 2022. From multiple sources, the Grand Jury heard several allegations regarding the meeting and its outcome. Without disclosing Board discussions regarding specific FBO proposals and the various risks associated with them, multiple Board members expressed frustration and their desire to get “shovels” in the ground and complete the FBO process. There was also purportedly disagreement regarding the clarity of instructions given to County staff as to how to proceed. In addition, the Grand Jury was told (corroborated by multiple sources) that *while the closed session was occurring*, confidential information was leaked to one of the interested FBO parties (from non-County staff present at the closed session), alleging that one Supervisor was harming its interest.

In February 2022, the Airport Manager told the Commission, according to its notes, that “staff met with the Board of Supervisors in a closed session where the agenda listed the three interested parties for FBO services [the Incumbent FBO and Respondents Three and Four] . . . The direction from the Board was to begin discussions with all three parties, but not let the lack of progress of any one FBO slow down the others. Staff requested all three parties to provide updated offers which will be reviewed by County staff in early March.”<sup>92</sup>

As of June 2022, several years after the process began, a second FBO leasehold and/or renegotiated leasehold with the Incumbent FBO has not been finalized. It is the Grand Jury’s understanding that the County is presently close to a term sheet with Respondent Four and in negotiations with the Incumbent FBO. It is unclear what transpired with regard to Respondent Three’s proposal.

#### G. Conclusion

No one interviewed ever imagined an FBO process lasting over six years. A failure to manage expectations over a protracted period, the use of closed sessions, and a lack of consensus amongst the Board and senior County officials undermined transparency and the process. One interviewee said that in hindsight, the County could have been more forthcoming: provided more formal stakeholder check-ins, shared data, repeated reminders of strategic goals, focused on robust process status updates, and engaged in proactive public out-reach. Lack of consensus as to approach and alleged leaks of confidential information further undermined the process and

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<sup>92</sup> See, [https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/\\_02072022-1165](https://www.countyofnapa.org/AgendaCenter/ViewFile/Minutes/_02072022-1165).

aggravated the politicization of the process. All of this was detrimental to the Airport's future, but more importantly to County residents.

Now after six years of protracted discussions, Napa leaders must bring these negotiations to a conclusion. Whether as a one or two FBO Airport, the time has come to renovate the terminal and fixed base operations. Napa needs a 21<sup>st</sup> Century airport.

## FINDINGS

- F1. The existing Airport terminal and fixed base operations need renovation and updating to be more efficient, generate more revenue, attract more aviation, and present a better visual representation of the County.
- F2. The Airport operates as a County enterprise fund; its non-property tax revenues can only be used for the benefit of the Airport according to FAA grant assurances.
- F3. The Airport has a yearly operational deficit that can be addressed or reduced through increased lease revenue and fees and fuel taxes, which are unlikely to occur without terminal and fixed base operation renovation and updating.
- F4. In order to renovate and update the Airport terminal and fixed base operations, the County needs to (a) acquire a second FBO long-term leasehold *and/or* (b) negotiate a new consolidated lease with the existing FBO.
- F5. It is unknown whether the Airport can sustain two FBOs.
- F6. The County is obligated to adhere to its FAA grant assurances in its dealing with any FBO, including ensuring any leasehold does not violate provisions governing economic non-discrimination, exclusive rights and land banking.
- F7. Outside of the 2007 Airport Master Plan (which assumptions have been proven by time to be significantly inaccurate), there is not a current vision for the Airport that is endorsed by the Board, which addresses issues like the use of facilities, attraction of commercial entities, relationship to broader transportation planning or public engagement.
- F8. The Board and Senior County Officials have often disagreed as to how best to renovate and upgrade the terminal and fixed based operations, including when to renegotiate with the Incumbent FBO, whether to acquire a second FBO, and the interpretation of its obligations under FAA grant assurances.
- F9. The County failed to keep Airport PMCDs current; failure to update them for approximately four decades caused delays in releasing the RFP.
- F10. After the County decided to use an RFP process to acquire a second FBO, it did not adequately think through the timeline and elements required (e.g., update PMCDs, complete an environmental assessment, etc.), leading to unrealistic timelines and expectations.
- F11. Failure to coalesce behind a two FBO strategy by all Board members and Senior County officials once the RFP strategy was adopted, led to FBOs (prospective and the Incumbent FBO) aggressively pursuing a sole FBO strategy in their proposals and discussions with the County, elongating and muddling the process.
- F12. While the County provided updates regarding the RFP process to the Commission, its members felt the County was not transparent (i.e., overusing confidentiality for real estate negotiations concerns as an excuse) and did not adequately consult them; as a result many of its members questioned the purpose of the Commission.
- F13. The County should have managed expectations better and been more transparent by having a communications plan which included more formal stakeholder check-ins, data sharing,

repeated reminders of strategic goals, robust process status updates, and proactive public outreach.

- F14. Allegations from multiple interviewees with first-hand knowledge that closed Board sessions were misused/overused are credible.
- F15. Allegations from multiple interviewees with first-hand knowledge that confidential information was leaked by non-County staff from closed Board sessions to entities and individuals who were not authorized to receive that information, including FBO entities involved in negotiations with the County, are credible.
- F16. Overuse of closed sessions, leaks and a failure of the Board and senior County officials to act in a unified manner, complicated and undercut the RFP process, undermined staff, complicated negotiations, and elongated the process.

## **RECOMMENDATIONS**

- R1. By January 1, 2023 the Board should articulate and publish a clear written vision for the Airport which provides for the modernization of the Airport, accommodates Napa County's residents, tourism, and business needs, integrates with other transportation planning, and articulates a meaningful role for the Commission, while also remaining true to the character and values of Napa County.
- R2. In order to ensure the County is more transparent in the future, the Board and County Executive should complete a review by January 1, 2023, of the process to acquire a second FBO to determine how it could have been more transparent and managed expectations better and present its findings and recommendations during a public Board meeting.
- R3. By October 1, 2022, the Board should undertake a review of its use of, and the procedures associated with, closed sessions, to ensure that they are in accord with statutory requirements and further the interests of open government; its findings and recommendations should be presented in a public Board meeting.
- R4. By October 1, 2022, the Board should undertake a review of its procedures to ensure that information that should remain confidential during closed sessions is not inappropriately communicated to non-authorized entities and individuals; its findings and recommendations should be presented in a public Board meeting.
- R5. For fiscal year 2023, the Napa County Auditor-Controller should consider internal reviews/audits of (a) the Airport FBO RFP process, (b) the controls and processes governing the use of closed Board sessions, and (c) the controls and processes used to safeguard the confidentiality of information associated with County RFP processes and contractual negotiations.

## **REQUEST FOR RESPONSES**

The following responses are required pursuant to Penal Code sections 933 and 933.05.

- Napa County Board of Supervisors (R1, R2, R3, R4)
- Napa County Chief Executive Officer (R2)
- Napa County Auditor-Controller (R5)