



# AMERICAN CANYON FIRE PROTECTION DISTRICT

Geoff Belyea  
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Cliff Campbell  
Assistant Fire Chief

November 5, 2024

## VIA E-MAIL

Charles Koch, Chair  
and Commission Members  
Dana Morrison, Executive Officer  
Napa County Airport Land Use Commission  
1195 Third Street, Suite 210  
Napa, CA 94559

Re: October 25, 2024 Draft Napa County Airport Land Use Compatibility Plan

Dear Chair Koch, Commission Members and Executive Officer Morrison:

This communication is written after review of the distribution on the evening of Friday, October 25, 2024, by the Napa County Airport Land Use Commission (“ALUC”) of an updated draft ALUC Compatibility Plan (“ALUCP”).

This communication comments on behalf of the American Canyon Fire Protection District (“District”) on the ALUCP as well as related actions or omissions under the California Environmental Quality Act (“CEQA”) for purposes of the record on the substantive decision of the ALUC and the record on the CEQA Initial Study/Negative Declaration also made available on October 25, 2024.

Enclosed is a copy of the District’s October 23, 2024 communication, which confirms that the issues raised in that communication concerning ALUCP modification were raised informally with both the ALUC Executive Officer and ALUC Counsel.

The District again raises the issue of the proposed definition of a “Major Land-Use Action” [ALUCP Section 2.5.2(a)(1)] to include the:

“Expansion of the sphere of influence of a city or a special district.”

Again, under the District’s enabling act, the Fire Protection District Act of 1987 (Health and Safety Code Section 13800 *et seq.* (“Act”), the District does *not* have land-use powers but does possess the powers and services as specifically described in Health and Safety Code Sections 13861 and 13862.

Stated plainly, the District could not accomplish a land-use action because it does *not* have land-use power nor is land use a “service” of the District.

The determination of a sphere of influence (“SOI”) lies within the exclusive jurisdiction of a local agency formation commission (“LAFCO”) such as the Napa County LAFCO as governed by the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 *et seq.* (“CKH”).<sup>1</sup>

Under CKH, an SOI:

. . . means a plan for the probable physical boundaries and service area of a local agency as determined by the commission.” *See*, Section 56076.

The plain meaning<sup>2</sup> of CKH must be followed. To accept ALUC Staff and Counsel interpretation would require adding the words “and an Airport Land-Use Commission” to the CKH definition of a SOI. Fundamental rules of statutory construction prohibit adding words to a statute. *See, Burden v. Snowden*, 2 Cal.4<sup>th</sup> 556, 562 (1992); modified, 2 Cal.4<sup>th</sup> 758.

CKH “provides the sole and exclusive authority and procedure for the initiation, conduct and completion of changes of organization and reorganization for cities and districts.” *See* Section 56100 *et seq.*

CKH Section 56425 sets forth a detailed procedure for the formulation of an SOI requiring consultation with cities and special districts. No mention is made of consultation with an Airport Land-Use Commission.

An SOI amendment may be submitted by a local agency (Section 56054) or by a landowner or landowners (Section 56428(a)).

Assuming for the moment only that a landowner submitted an application for an SOI to the ALUC, what would be the procedure if the ALUC denied the application for an SOI amendment? Landowners are not a “local agency” that could somehow meet and override the ALUC decision. In short, the position of ALUC Staff and Counsel that the ALUCP can require review of a city or special district in an illogical interpretation of the involved statutory schemes, something which is to be avoided. *See, Landrum v. Superior Court*, 30 Cal.3d 1, 9 (1981).

To further emphasize the inappropriate inclusion in the ALUCP of a Major Land-Use Action to include expansion of the SOI of a city or special district, is the fact that the Napa County LAFCO *was not* included in the mailing list for the updated ALUCP. *See*, ALUCP Attachment F.

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<sup>1</sup> All Section references are to the Government Code Section unless otherwise noted

<sup>2</sup> It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed. *See, Timber Ridge Enterprises, Inc. v. City of Santa Rosa*, 86 Cal.App.3d 873, 886 (1978).

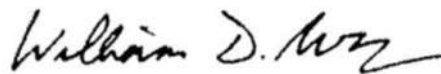
This lack of notice was confirmed by the LAFCO Executive Officer this morning who will be commenting on the substance of the ALUCP and the claim of SOI review authority in the ALUCP.

The District again reiterates the balance of the revisions to the ALUCP set forth in its October 23, 2024 communication.

As for CEQA compliance, the continued inaccurate designation of an ALUCP SOI review process means the Project description is inaccurate.

If upon review you have questions, please contact me.

Very truly yours,



William D. Ross  
District Counsel

Enclosure: October 23, 2024 Communication

cc: Leon Garcia, Chair  
David Oro, Vice Chair  
Mark Joseph, Board Member  
Mariam Aboudamous, Board Member  
Pierre Washington, Board Member  
Geoff Belyea, Fire Chief  
Martha Banuelos, Fire Executive Assistant  
American Canyon Fire Protection District

Jason Dooley, Deputy County Counsel  
Office of the Napa County Counsel

Brendon Freeman, Executive Officer  
Napa County LAFCO



## AMERICAN CANYON FIRE PROTECTION DISTRICT

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Phone 707-551-0650 Fax 707-642-0201

Cliff Campbell  
Assistant Fire Chief

October 23, 2024

**VIA E-MAIL**

Dana Morrison, Executive Officer  
Napa County Airport Land Use Commission  
1795 Third Street, Suite 210  
Napa, CA 94559  
[Dana.Morrison@CountyofNapa.org](mailto:Dana.Morrison@CountyofNapa.org)

Re: Comments of the American Canyon Fire Protection District on the Proposed Napa County Airport Land Use Compatibility Plan

Dear Executive Officer Morrison:

This communication comments on behalf of the American Canyon Fire Protection District (“District”), a separate legal entity from the City of American Canyon, on the draft Airport Land Use Compatibility Plan (“ALUCP”) Update and related actions under the California Environmental Quality Act (“CEQA”) after review of actions taken at the Napa County Airport Land Use Commission (“ALUC”) meeting of July 17, 2024 and subsequent meetings with ALUC Staff.

First, the District is governed by the Fire Protection District Law of 1987 (Health and Safety Code Section 13800 *et seq* (the “Act”), which in Health and Safety Code Sections 13861 and 13862, sets forth the powers and services of the District which *do not* include land use. The District *is not* a land use agency.

The District did not receive notice of the July 17, 2024 ALUC hearing and proposed ALUCP Update, but assumes that in the future the District will receive adequate and timely notice concerning ALUCP changes.

With respect to the ALUCP Update, the District maintains that ALUCP sections, as described below, dealing with required ALUC review of District sphere of influence (“SOI”) expansions, should be removed. This is because SOI decisions fall within the exclusive jurisdiction of the Napa County Local Agency Formation Commission (“LAFCO”) under provisions of the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 *et seq*, “CKH”).

Specifically at issue is ALUCP Update Section 2.5.2(a)(1), which indicates that a “Major Land Use Action,” including an “expansion of the sphere of influence of a . . . special district” is subject to ALUC review.

However, such a determination and SOI expansion is within the exclusive jurisdiction of the Napa County LAFCO as confirmed by CKH in Government Code Sections 56301 and 56425<sup>1</sup>. The ALUCP Update does not state *how* a District SOI would be reviewed by the ALUC. For example, what ALUCP procedures or standards would evaluate the extension of the District fire and life safety services, especially if it involved the operation of the airport?

Additionally, the District as a “local agency,” could *not* refer an SOI request involving the District to the ALUC if the SOI amendment is proposed by a resident voter or resident landowners in the affected territory.

There is both incorporated and unincorporated territory in the District within the Airport Influence Area (“AIA”) for which the District, under the State Building Code and Uniform Fire Code, would, and has, imposed ministerial development conditions to ensure adequate fire flow and compliance with structural life and fire safety provisions. Again, the District exercises no land use functions in the AIA, but it does impose life and fire safety standards on development authorized by the County or the City. The District presently has mutual and automatic aid agreements with other fire agencies *in the AIA*, under which there have been continuous and frequent documented responses.

### **Modification of ALUCP Compatibility Zones to Allow District Fire Stations**

The District specifically requests modification of the ALUCP Compatibility Zones to allow for a future District Fire Station which would afford shorter response times to residents and property owners in the AIA, including the airport.

This request would mean modification of ALUCP Chapter 5, Exhibit 5-1, p.56<sup>2</sup> which currently provides that for “Public Safety Facilities,” including police and fire stations, being allowed in Zone C only if it is airport serving; being allowed in Zones B3, D1 and D2 only if site outside Zone would not serve an intended function. Additional criteria also requires that all Intensity Criteria have to be met.

The District maintains that primary *land uses determinations* on fire station locations in the ALUCP should be decided by the City or County and their respective land use standards. A fire station should *not* be precluded or restricted as described in the ALUCP Compatibility Zones, simply because the fire and life safety functions are being performed *now* by the District and a

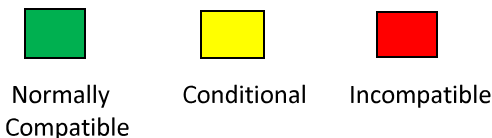
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<sup>1</sup> Both Government Code Sections 56301 and 56425 set forth procedures and standards under which a LAFCO SOI determination is to be made. For the District, the governmental services considered in an SOI expansion are the extension of fire and life safety services, not “*land use*” as the District does *not* have land use authority. This analysis is supported by *Growth Within Bounds* a report of the *Commission on Local Governance for the 21st Century* (January 2000), a document that has been judicially declared to be the legislative intent of CKH.

<sup>2</sup> Page 56 of Exhibit 5-1 is enclosed **Exhibit “A”** with the criteria for Public Safety Facilities is set forth as a line item.

District Fire Station within the AIA would be located on criteria that would be beneficial for fire and life safety concerns of residents, property owners and the airport operation itself: notably, emergency response times.

A Compressed ALUCP p.56 is set forth below to facilitate the requested District changes.

Intensity Criteria	Compatibility Zones								Intensity Criteria Interpretation
Max. Sitewide Average Intensity (people/acre) Max. Single-Acre Intensity (people/acre)	A	B1	B2	B3	C	D1	D2	E	All nonresidential development shall satisfy both sitewide and single-acre intensity limits
	0	50	75	150	100	200	300	No	
	0	100	225	450	300	800	1200	limit	
Easement/Notification Requirement	Aviation Easement								
Land Use Category	Legend (see last page of table for interpretation)								Additional Criteria
- Multiple land use categories may apply to a project - Land uses not specifically listed shall be evaluated using the criteria for similar uses - Typical occupancy Load Factor (approx. # s.f./person) indicated for certain uses									- Conditions listed below apply to uses listed as "Conditional" (yellow) for a particular zone - Numbers in yellow cells are Floor Area Ratios (FARs) based on typical occupancy load factor indicated for that use and average intensity limit indicated for zone
Public Safety Facilities: police, fire stations									C: Allowed only if airport serving  B3, D1, D2: Allowed only if site outside zone would not serve intended function  All: Ensure intensity criteria met

Under the column "Intensity Criteria Interpretation," all the information currently set forth, should be modified. Clearly, the District would be airport-serving, as the District already provides fire and life safety service to the airport within the AIA. The designation "B3, D1 and D2: allowed only if site outside Zone would not serve intended function," cannot be applied to a District Fire Station as it makes no common sense. A fire station located in designation C, B3, D1 and D2, would benefit the airport and residents and property owners within the AIA with fire and life safety services with enhanced (shortened) response times for life and safety services

Finally, the intensity criteria application should also be removed, as a fire station properly located for enhancing response times would utilize the available lot space for all necessary fire and life safety facilities and equipment in full compliance with all FAA restrictions.

### **Public Utilities Code Section 21670**

There is at least one portion of Public Utilities Code Section 21670<sup>3</sup> that is applicable for legal sufficiency of the ALUCP.

Public Utilities Code Section 21670(f) indicates that an ALUCP is applicable to “special districts.” There is no definition advanced as to special districts. However, the *2011 Caltrans Handbook* offers the following analysis:

“Special Districts, School Districts, and Community College Districts Pursuant to PUC Section 21670(f), the State Legislature has clarified its intent that “special districts, school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.” Accordingly, ALUCs shall review land use plans, master plans, individual development projects, and other comparable actions proposed by the three types of districts identified above. As described in this chapter, the adoption and amendment of land use plans (general and specific plans) and development ordinances form a basis for cities and counties to engage in airport land use compatibility planning. Special districts, school districts, and community college districts do not, as a general rule, prepare such plans and ordinances. They do, however, acquire land and build or lease facilities, which would be actions subject to review within the AIA (or within two miles of an airport in the absence of an adopted AIA). It is therefore recommended that the districts and the ALUC establish a procedure to review such actions. Where such actions are within an area subject to a general plan, and that plan has been found consistent with the ALUCP, there are several procedures within the Government Code relating to special districts and school districts which could form the basis for compatibility planning: Major public works projects undertaken by special districts and school districts shall be submitted to the county or city planning agency for review as to conformity with the adopted general plan (Government Code Section 65401). The acquisition of land for public purposes, and the construction of a public building shall be submitted to the county or city planning agency for review as to conformity with the general plan (Government Code Section 65402). A special district or school district may prepare a five-year capital improvement program. This program shall be referred to the county or city planning agency for review as to conformity with the general plan (Government Code Section 65403).”

This *2011 Caltrans Handbook* analysis, by referring *only* to school districts, community college districts and special districts without specification to defined special districts suggests that fire protection districts are not included because of the fire and life safety services directly connected with their defined use and intensity of use.

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<sup>3</sup> A copy of Public Utilities Code Section 21670 is attached as Exhibit “B.”

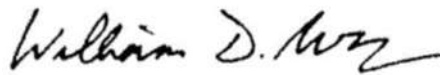
These deficiencies of the proposed ALUCP Update have been discussed specifically by this Office and District Chief Belyea with the ALUC Executive Officer and ALUC Counsel Jason Dooley without an indication of whether they would be reviewed for change or even considered for change necessitating this communication.

**Requested Modification; Concurrent CEQA Modification**

The District respectfully requests that the appropriate modifications, as discussed above, be made to the ALUCP Update Project Description and concurrent changes be made to the Project Negative Declaration all accomplished in full compliance with procedural and substantive requirements for adoption of the ALUCP.

Should you have questions concerning the matter set forth in this communication, please contact District Chief Geoff Belyea at: [gbelyea@amcanfire.com](mailto:gbelyea@amcanfire.com), or contact the undersigned at [wross@lawross.com](mailto:wross@lawross.com).

Very truly yours,



William D. Ross  
District Counsel

Enclosure: Exhibit A – ALUCP Page 56 of Exhibit 5.1  
Exhibit B – Public Utilities Code Section 21670

cc: Leon Garcia, Chair  
David Oro, Vice Chair  
Mark Joseph, Board Member  
Mariam Aboudamous, Board Member  
Pierre Washington, Board Member  
Geoff Belyea, Fire Chief  
Martha Banuelos, Fire Executive Assistant  
American Canyon Fire Protection District  
  
Jason Dooley, Deputy County Counsel  
Office of the Napa County Counsel





# WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

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November 5, 2024

County of Napa  
Airport Land Use Commission

Sent via email to [meetingclerk@countyofnapa.org](mailto:meetingclerk@countyofnapa.org)

RE: AIRPORT LAND USE COMMISSION MEETING NOVEMBER 6, 2024 -  
AIRPORT LAND USE COMPATIBILITY PLAN UPDATE AND NEGATIVE  
DECLARATION ADOPTION HEARING.

Water Audit California comments as follows:

As a preliminary manner, we wish to deal with the timing of this comment. As always, it has been driven by the actions or failure to act from Napa County ("County"). The public was given notice of the intended action three business days ago. As another commenter has protested, notice and time is inadequate for the purpose.

The Airport Land Use Commission (ALUC) considered updating the standing 1991 Airport Land use Compatibility Plan (revised in 1999) at its February 1, 2023 meeting:

"CEQA Status: this is an initial introductory kickoff meeting for the ALUCP update, an Initial Study/Mitigated Negative Declaration or Environmental Impact Report will be prepared, at a later date, as part of the comprehensive update."

The matter returned to the ALUC at its July 17, 2024 meeting. However, the proposition advanced is substantially different:

"CEQA Status: Consideration and adoption of a Negative Declaration. According to the proposed Negative Declaration, the proposed project would not have any potentially significant environmental impacts."

In short, the issues that give rise to public concern have changed, and therefore any earlier comment would be presently irrelevant and therefore a waste of effort. Respectfully, identifying a project for which an EIR is proposed is entirely different than a project on which no mitigation whatsoever is anticipated. One cannot claim advantage of an earlier notice of intent when the County's intentions and objectives dramatically change.

Further, two regulators have made comments and proposed mitigation which have been ignored by the County. Respectfully, the County is without jurisdiction to ignore California Department of Fish and Wildlife ("CDFW") proposed mitigations, or to unlawfully delegate its own authority to its Executive Officer.

Again, the present record before the ALUC is materially incomplete.

Water Audit California ("Water Audit") sought by public records request, Mead & Hunt Consultant procurement documents. One of the documents received revealed a Board of Supervisors' ("BOS") December 13, 2022 meeting Staff Report entitled "Legislative Details (With text)." That document was created and printed on October 28, 2024, one week ago, and almost two years after the BOS consent item was heard. The record does not disclose a Staff Report at the time when the consent item was approved. It is reasonable to infer that it was written years post-facto to fill in a presently recognized omission. All documents of such nature are to be regarded with skepticism.

The subject Staff Report explained that the

"ALUCP Update is a project under CEQA process, current cost proposal includes preparation of an Environmental Impact Report, however, based on past history processing ALUCP updates, Mead & Hunt noted that likely a Mitigated Negative Declaration would be required. The extent of any identified concerns, and land use changes will drive the type of CEQA document required for the update."

The Staff Report for the upcoming November 6, 2024 ALUC meeting recommends

"Consider and adopt the updated Airport Land Use Compatibility Plan (ALUCP), including changes made in response to public comment, and certify a Negative Declaration finding that the proposed project would not have any potentially significant environmental impacts."

The record does not contain any recent event that caused the change in assessment.

This “no impact” assertion is not supported by fact. CDFW recommendations to clarify, evaluate, and mitigate were not included. It has been informally represented to Water Audit that CDFW concerns have been addressed in correspondence with the County, but there is no indication of this in the record.

CDFW’s position is unambiguous.

"The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fee is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final."

Similarly, the County has addressed only two of nine Caltrans Aeronautics concerns. The remaining seven concerns are all regarding alleged "delegation of authority" from the ALUC to the ALUC Executive Officer.

The assertions challenged are that an ALUC Executive Officer has delegated authority from the ALUC to provide formal consistency determinations and comments for major land use actions referred to the ALUC. Respectfully, the Public Utilities Code (“PUC”) does not authorize the delegation of the ALUC’s duty to anyone else, or specifically in this case, an ALUC Executive Officer. It is a legal requirement that the participation of the majority of the commission members are to constitute a quorum to take any formal action, which includes consistency determinations. PUC, Section 21674, sets for the power and duties of the “commission” only.

Caltrans Aeronautics wrote on July 16, 2024:

“The Division recognizes the intent of the ALUC Executive Officer to alleviate the workload of the ALUC and to review voluntary referrals, amongst other administrative matters for the ALUC. However, under no circumstances can the ALUC Executive Officer have delegated authority for actions that are mandatory by the ALUC. Please clarify the language in the relevant policies to provide added clarity on this differentiation and to avoid misinterpretation of the policies and subsequent actions, in addition to differentiate authority powers related to Major Land Use Actions, Interim Mandatory Referral of Major Land Use Actions, and Mandatory Land use Actions.”

For the foregoing reasons, it is respectfully prayed that the instant matter be modified to incorporate verbatim CDFW comments, and to strike the unlawful delegation of authority.

Respectfully,



William McKinnon  
General Counsel  
Water Audit California