

## MEMORANDUM

DATE: January 10, 2020  
TO: Chairperson Minjares and Commissioners  
FROM: Steve Mattas, General Counsel and Claire Lai  
SUBJECT: Ventura County Airport Land Use Commission Review of the Cloud Nine Hangar Project at Camarillo Airport

### INTRODUCTION AND SUMMARY

This memorandum relates to the request from the City of Camarillo, dated December 6, 2019, relating to the Cloud Nine Hangar Project. The City has requested that VCTC, in its role as the Ventura County Airport Land Use Commission (“ALUC”), place the proposed project on its next meeting agenda for review and comment. On December 31<sup>st</sup>, Kip Turner, Director of Airports for Ventura County, submitted a letter to the Commission which asserts that City’s letter lacks legal and factual support and that further requests that the Commission take no action regarding the proposed Cloud Nine Project. Based on the facts presented in the City’s request letter and in the letter from County’s Director of Airports, draft CEQA documents, and relevant attachments, we do not believe this project is within VCTC’s mandatory review jurisdiction based on state law but a voluntary review is allowed under state law with mutual consent of ALUC and the party with land use authority over the project, which we understand to be the County. Finally, while not addressed in either the City’s or the County’s correspondence, Ventura County General Plan Policy 2.14.2, subsection (4) does appear to require review by VCTC if the proposed project site is within the Airport Hazard Zone.

### BACKGROUND

The County of Ventura (“County”) is reviewing a project proposed by RKR Incorporated (“Applicant”) to construct new hangars and office spaces at the Camarillo Airport. Commonly referred to as the “Cloud Nine Project” (“Project”), the proposed Project would construct four additional commercial hangars at Camarillo Airport and allow for the storage of larger private aircraft that are not currently available at the airport. The hangars will include office space and amenities such as lounges, fitness rooms, and flight department offices. The County and Applicant have negotiated and the County has approved but not yet signed a draft lease agreement for the location of the proposed Project which is at the unimproved area located at the northeast end of the airport. The County has prepared and released a draft Mitigated Negative Declaration (“MND”) and may adopt the MND in the near future as we understand it. The City of Camarillo (“City”) has

provided public comments to the County stating that the MND is inadequate and should be revised according to the points raised by the City.

The County and the City previously entered into an agreement in 1976 regarding the development and surrounding use at Camarillo Airport (“1976 Agreement”). The 1976 Agreement provides, among other things, that the County and City will jointly create the five-member Camarillo Airport Authority comprised of two members from each of their legislative bodies plus one public member. The County and City also agreed to submit all actions with respect to any matters including land use, development, or operation at the Camarillo Airport to that airport authority for review and recommendation (which the entities may override using specific voting methods). Additionally, the agreement provides certain restrictions on the use and operation of the airport. Of those restrictions, the 1976 Agreement limits usable runway length to 6,000 feet, noise levels to 60 CNEL average noise and 90 dBA single event, and aircraft weight to 115,000 lbs. The 1976 Agreement does not provide for review or referral to any other governmental entities. Both the letter from the County Director of Airports and a letter dated November 19, 2019 from the Project applicant RKR Incorporated state that the parties are aware of and will comply with the 115,000 pound aircraft weight limit set forth in 1976 JPA.

The Ventura County Transportation Commission (“VCTC” or “Commission”) serves as the Airport Land Use Commission (“ALUC”) for Ventura County. It has adopted an Airport Comprehensive Land Use Plan on July 7, 2000, which serves as the airport land use compatibility plan as required by state law for the Ventura region (“ALUCP”). The ALUCP covers the Camarillo, Santa Paula and Oxnard Airports as well as the Naval Air Station Point Mugu and their surrounding areas. For the Camarillo Airport, the County and City have also adopted the Camarillo Airport Master Plan (CAMP), which serves as the planning document for development within the airport’s boundaries consistent with the ALUCP.

The City has now submitted correspondence to VCTC requesting that it include the Project on its next meeting agenda for review and comment. Specifically, the City requests that VCTC assess and comment on the Project’s consistency with the ALUCP and the CAMP. Additionally, the City also asks VCTC to determine whether the County’s MND is adequate and, if necessary, request the County to delay adoption of the MND until VCTC could provide comments.

**The City bases its request on the following grounds:**

- (1) The MND fails to acknowledge the 1976 Agreement. (i.e. allegedly violating aircraft weight requirement limits).
- (2) The MND fails to analyze whether the Project is consistent with the ALUCP or the CAMP. For instance, it merely determined that the CAMP “conceptually anticipated” private hangar development in the Project area.
- (3) VCTC, as the County’s ALUC, has authority to review and provide consistency determinations to local agencies regarding proposed amendments and modifications to general and specific plans, zoning ordinances, building regulations, and airport master plans.
- (4) The Project would require a CAMP amendment because the CAMP limits the airport’s development and use to smaller aircrafts than what the Project is proposing to store.
- (5)

## APPLICABLE LAW

The duties of an ALUC are set forth under provisions of the California Public Utilities Code. The ALUC **does not** have jurisdiction over the operation of airports, nor do they approve projects or issue permits. Specifically, the ALUC serves the following statutory functions:<sup>1</sup>

- Prepare and adopt an ALUCP for each of the airports within its county;
- Assist local agencies in ensuring compatible land uses in the vicinity of all new and existing airports;
- Coordinate planning among state, regional and local levels regarding air transportation development and protect public health and safety;
- Review plans, regulations, and other local agency actions for compliance with the ALUCP as provided by state law; and
- Adopt rules and regulations necessary to carry out these functions.

The Public Utilities Code specifies when cities and counties must refer certain actions to the ALUC for review. Caltrans has also published statewide guidelines, which are contained in the California Airport Land Use Planning Handbook (“Handbook”). These two sources of authority establish when ALUC review is required or voluntary.

### **A. Actions for which ALUC Review is Mandatory**

#### **(1) When a local agency proposes to:**

- a. Adopt a general plan, specific plan, zoning ordinance, or building regulation, if the planning boundary is within the ALUCP influence area;<sup>2</sup>
- b. Adopt or amend its airport master plan;<sup>3</sup> or
- c. Submit plans to construct an airport, or expand an existing airport (which requires an amendment to a state-issued airport permit).<sup>4</sup>

#### **(2) When the ALUC has not adopted an ALUCP.**

In this case, all local actions, regulations, and permits within the vicinity of a public airport must be submitted to the ALUC for review and approval.<sup>5</sup> This section does not apply as VCTC has adopted an ALUCP

#### **(3) When the local agency has not revised its general or specific plan to be consistent with an ALUCP or overruled the ALUC in that regard.<sup>6</sup>**

Subsections (A)(2) and (A)(3) above are not relevant to this analysis as the ALUC has adopted an ALUCP and the relevant general plans are consistent with the ALUCP.

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<sup>1</sup> Public Utilities Code section 21674.

<sup>2</sup> Public Utilities Code sections 21676 (a), (b).

<sup>3</sup> Public Utilities Code section 21676 (c).

<sup>4</sup> Public Utilities Code sections 21661.6, 21664.5.

<sup>5</sup> Public Utilities Code section 21675.1(b).

<sup>6</sup> Public Utilities Code section 21676.5(a).

With regards to Subsection (A)(1), when a local agency submits its general or specific plan to the ALUC for review, as stated in (A)(1) above, the ALUC will determine whether the plan(s) is consistent with the ALUCP. If the ALUC determines the plan is inconsistent, the local agency may amend its plan, or it may overrule the ALUCP after a public hearing and by a two-thirds vote of its governing body making specific statutory findings. If the local agency does not perform either action, state law allows the ALUC to require the local agency to submit all actions, regulations, and permits to the ALUC for review. The local agency may overrule any inconsistency determination with the same process above. As the project does not seek a general or specific plan amendment and for the reasons set forth below, we do not believe ALUC review is mandatory for this project under state law.

### **B. Actions for which ALUC Review is Voluntary**

The conditions under which ALUC review is voluntary are as follows:

- (1) If the local general/specific plan and planning policies and regulations are fully consistent with the ALUCP.**
- (2) The ALUC has an agreement with the local jurisdiction to provide for such review.<sup>7</sup>**

This agreement should be reflected in the ALUCP, local plans, or some other mutually agreed upon policy documents.

We note that under these voluntary circumstances, the ALUC review becomes advisory, and local agency with land use authority need not formally overrule the ALUC contrary conclusion in order to proceed with the action at issue.<sup>8</sup>

### **C. California Environmental Quality Act (CEQA) Documents**

There is no special provision under CEQA that would require certain environmental documents to be independently submitted for ALUC review. The Handbook provides, however, that such CEQA documents should be provided to the ALUC in conjunction with a local action submitted for ALUC review under the circumstances described above.<sup>9</sup>

## **DISCUSSION**

Based on our review of the Project documents and relevant exhibits, we do not believe the Project is within the Commission's mandatory jurisdiction serving as the ALUC. Here, the Commission has adopted an ALUCP, and there is no evidence suggesting that the County or City's plans and policies are inconsistent with the ALUCP. Additionally, the Project does not constitute an action for which state law would mandate ALUC review, and there are no state law provisions requiring the ALUC to review CEQA documents. Further, assuming aircraft utilizing additional hangars proposed by the Project would comply with the weight limitation set forth in the 1976

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<sup>7</sup> Public Utilities Code section 21676.5(b).

<sup>8</sup> Handbook pp. 6-5 to 6-6.

<sup>9</sup> Handbook pp. 6-6.

Agreement as is set forth in the letters from the County Airports Director and the project applicant, no other evidence has been provided suggesting that the Project would require a CAMP amendment.

We also note that, as stated under (B)(2) in the section above, that the County/City<sup>10</sup> and ALUC could enter into a voluntary agreement to allow for review of this project but that would require mutual consent of the parties.

We do note, however, that Ventura County General Plan policy 2.14.2, subsection (4) expressly provides that “Discretionary development within the Airport Hazard Zones shall be reviewed by the Ventura County Transportation Commission (VCTC) for consistency with the Ventura County Comprehensive Airport Land Use Plan.” While this would need to be confirmed by County staff, it does appear from Figure 2 of the County General Plan that the Project site is within the Airport Hazard Zone. Also, while Discretionary Development is broadly defined in the Ventura County General Plan, VCTC staff would want to confirm with Ventura County staff that the Project does require a discretionary approval by County, particularly given that the lease itself was, according to the County’s letter previously approved on September 25, 2018. .

**I. VCTC has adopted an Airport Land Use Compatibility Plan in its capacity as the ALUC, and there are no facts suggesting that the County or City’s plans and policies are inconsistent with that plan.**

The Commission has adopted the “Airport Comprehensive Land Use Plan” in 2000. This plan serves as the ALUCP for the Ventura County region as required by Public Utilities Code section 21674. This plan includes the four airports located in the County and identifies the future land use plan and designations in the airports’ surrounding areas, the anticipated airport activities, and compatibility issues such as forecast noise exposure around the airports.<sup>11</sup> These uses, designations, and compatibility standards have been incorporated into the County and City’s planning policies.

The County’s general plan specifically provides that the general plan must remain consistent with the ALUCP.<sup>12,13</sup> Likewise, the City has adopted the CAMP that is consistent with the ALUCP

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<sup>10</sup> The party to this voluntary agreement with ALUC would be the entity with land use authority over the airport itself.

<sup>11</sup> The ALUCP (referred to as the Airport Comprehensive Land Use Plan in the local document) may be viewed and downloaded at <https://www.goventura.org/wp-content/uploads/2018/03/2000-airport-land-use-for-ventura-county.pdf> (last accessed December 30, 2019).

<sup>12</sup> General Plan Goals, Policies and Programs Sections 2.14.2 (2),(4); 4.2.2 (11); 4.2.3, all of which can be viewed and downloaded at <https://docs.vcrma.org/images/pdf/planning/plans/Goals-Policies-and-Programs.pdf> (last accessed December 30, 2019).

<sup>13</sup> The General Plan goals and policies document has designated lands close to each of the airports as “Airport Hazard Zones” and requires Discretionary developments within these areas to be reviewed by VCTC, acting as the ALUC, for consistency with the ALUCP, in order to avoid accidents and air traffic related hazards. The County General Plan also designates certain areas around the airport as Agriculture or Open Space on the General Plan Land Use Map and limits allowed land uses to certain uses such as agriculture, public utility, waste water disposal, energy production and storage purposes. See General Plan Goals, Policies and Programs Sections 2.14.2 (2)(4) and Figure 2.

and has incorporated the land use and compatibility standards into its zoning code.<sup>14</sup> Therefore, based on these facts, this Project does not require mandatory ALUC review under (A)(2) and (3) above because VCTC has already adopted an ALUCP and there is no indication that the local agencies' plans and policies are inconsistent therewith.

**II. The Project does not constitute an action for which state law would mandate ALUC review.**

Likewise, ALUC review is not mandated for this Project because the County is not proposing to adopt or amend its General Plan, zoning or building regulations, nor is it proposing to construct or expand an existing airport. As presented in the Project review documents, the applicant is proposing to construct four new hangars and office facilities at the Camarillo Airport. There is no proposal to amend the County or the City's general plan, a specific plan, or a zoning or building regulation. The Project proposes to develop existing open land within the airport boundaries and will add new hangars to the airport<sup>15</sup>, but it does not appear to be expanding the area or boundaries of that airport (as there are no plan submittals to do so) and does not appear to require any amendment to a state-issued airport permit.

**III. Since a CAMP amendment does not appear to be necessary to approve the project, the requirement to refer a plan amendment to ALUC for review would not apply under state law.**

The City argues that the CAMP limits the use of the Camarillo Airport to smaller aircraft. For example, the CAMP prohibits Boeing Business Jets and other planes larger than the Gulfstream V and Global Express models, and the plan's references to future large private commercial hangars in the Project area are insufficient to determine whether the Project is consistent with the CAMP.

The Project appears to be consistent with the CAMP in proposing to add new hangars which are anticipated in the CAMP. First, the CAMP specifically provides that additional hanger spaces will be needed during the future planning period for this airport. The CAMP includes a comparison of existing hangar space to future hangar requirements, which indicates that the airport will need significantly more hangar space than what it currently provides.<sup>16</sup> Likewise, the CAMP observes that the Camarillo Airport is expected to include additional business class aircraft with larger wingspans, which would require larger facilities.<sup>17</sup>

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<sup>14</sup> CAMP pp. 1-27. The CAMP may be viewed and downloaded at [https://vcportal.ventura.org/AIRPORTS/docs/document\\_library/Camarillo\\_Airport\\_Master\\_Plan.pdf](https://vcportal.ventura.org/AIRPORTS/docs/document_library/Camarillo_Airport_Master_Plan.pdf) (last accessed December 30, 2019).

<sup>15</sup> See page A-4 of Exhibit 1 attached to the City of Camarillo's December 6, 2019 correspondence. See Exhibit 5A of CAMP, available at [https://vcportal.ventura.org/AIRPORTS/docs/document\\_library/Camarillo\\_Airport\\_Master\\_Plan.pdf](https://vcportal.ventura.org/AIRPORTS/docs/document_library/Camarillo_Airport_Master_Plan.pdf), and page A-3 of the draft MND, available at <https://www.cityofcamarillo.org/City%20Manager/Trending/CloudNine%20Draft%20CEQA%20IS-MND%20for%20Public%20Review%2010.2019.pdf> (both last accessed December 30, 2019). See also the letter from County Airports Director dated December 31, 2019.

<sup>16</sup> CAMP pp. 3-26, 3-27; Exhibit 3E.

<sup>17</sup> CAMP pp. 4-26.

Additionally, the CAMP specifically provides that the “east terminal area”, which appears to be the proposed Project location, could support “four large conventional hangars” proposed as private investments with ground lease to be maintained by the County.<sup>18</sup> This location is also specifically denoted in the Airport Layout Plan as the “Northeast Hangar Development Area.”<sup>19</sup> The draft MND also addressed this point by stating that the proposed Project involves “building of an existing land use and current vacant site” and notes that the Project is consistent with the CAMP as it anticipates four large commercial hangars proposed as private investments.<sup>20</sup> The CAMP further notes that this east end area of the airport provides for development opportunities and privately constructed facilities, thereby increasing local economic benefits.<sup>21</sup> Therefore, the proposed Project appears to be consistent with the CAMP and is within the projected uses of the airport as determined by that plan.

Further, although it concludes that only smaller planes and business jets would utilize the Camarillo Airport during the long-term planning period, the CAMP, as distinguished from the 1976 Agreement which expressly imposes a weight limit, does not appear to limit the weight or size of future aircraft that may serve the airport. The City provided excerpts of the CAMP and asserts that it denotes certain aircraft, including Boeing jets, are prohibited at the Camarillo Airport. However, based on our reading of the corresponding CAMP sections, this discussion of aircraft types was intended to establish the baseline of aircraft that serve the airport (referred to as “critical aircraft” in the CAMP) for planning purposes. The CAMP notes that the airport is currently most frequently served by “ARC C II and D-II” class aircrafts with wingspans between 49 to 79 feet, but will transition to be most frequently served by “ARC C III and DIII” planes with wingspans up to 118 feet.<sup>22</sup> These aircraft include both smaller planes and business jets.

The CAMP states that this airport is not expected to accommodate planes that are larger or heavier than those standards listed here. It is expected that business jets will continue to serve the airport and increase in volume as they account for most of the annual operations at this location.<sup>23</sup> The proposed Project seems to be consistent with this expectation by providing additional hangars to accommodate additional air traffic level. It appears that the new hangars proposed by the Project would be able to house airplanes with larger wingspans than those currently serving the Camarillo Airport. However, the CAMP does not prohibit the use and storage of such planes at the airport.

Notwithstanding the foregoing, we do note that the airport’s master plan concept as recommended by the CAMP is based on its projection of service levels and aircraft types that are expected to utilize the airport. Thus, based on the foregoing projections and analysis, it appears that the Project is consistent with the CAMP in proposing additional hangars, and no amendments to the plan would be required at this time. Given that amendment to the CAMP is not necessary, there is not mandatory review by ALUC under state law.

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<sup>18</sup> CAMP pp. 5-8.

<sup>19</sup> Airport Layout Plan, Sheet 1 of 9, dated June 7, 2011.

<sup>20</sup> Draft MND pp. A-4 and fn. 2, B-41.

<sup>21</sup> CAMP pp. 5-9.

<sup>22</sup> CAMP pp. 3.3-4, 4-6.

<sup>23</sup> CAMP pp. 3-5 through 3-8, 3-10.

Finally, the City states that ALUC review is required because the MND fails to address the terms and use restrictions in the 1976 Agreement, and provides inadequate environmental analysis. First, both the County and the project applicant have confirmed in writing they the project will comply with e1976 Agreement. Moreover, the 1976 Agreement is between the County and City only and does not mandate all projects concerning the use and development of the Camarillo Airport be referred to the ALUC for review. On the contrary, the 1976 Agreement requires that development projects, permits, and other entitlements be referred to the Camarillo Airport Authority which is a separate local entity created only by mutual agreement. There is no provision in the 1976 Agreement that would mandate referral to the ALUC, and inconsistencies should be addressed between the City and County.

**IV. Notwithstanding that state law does not mandate review of the Project by ALUC, the County General Plan does appear to require such review if the Project is determined to be Discretionary Development as is located with the Airport Hazard Zone as set forth in the County's General Plan.**

Ventura County General Plan Policy 2.14.2, subsection (4) expressly provides that “Discretionary development within the Airport Hazard Zones shall be reviewed by the Ventura County Transportation Commission (VCTC) for consistency with the Ventura County Comprehensive Airport Land Use Plan.” While this would need to be confirmed by County staff, it does appear from Figure 2 of the General Plan that the Project site is within the Airport Hazard Zone. Also, Discretionary Development is broadly defined in the Ventura County General Plan, to include:

“Any development proposal, project or permit which requires the exercise of judgment, deliberation, or decision on the part of the decision-making authority in the process of approving or disapproving a particular activity, as distinguished from situations where the decision-making authority merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.”

Thus, to the extent that any land use entitlement granted for this project by the County would constitute a Discretionary Development and assuming the Project is located within the Airport Hazard Zone, the Ventura County General Plan would require a review by VCTC, acting in its capacity as the ALUC.

**V. The proposed lease agreement terms may arguably require the Project to comply with weight restrictions in the 1976 Agreement but for clarity it could be revised to expressly require compliance with the weight limit.**

The proposed lease agreement does not specifically require the Project to comply with the weight limits set forth in the 1976 Agreement but sections within the lease could be interpreted to apply the requirement or the County could consider including the express requirement. Section 4(c)(1) of the lease agreement requires the Applicant to “comply with the minimum operating standards or requirements promulgated by County, applicable to each of [Applicant]’s activities on the airport.” Likewise, Section 4(c)(6) requires the Applicant to comply with “all federal, state, and local laws, rules, and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by County . . .” Further, Section 25 of the lease agreement also requires the Applicant to comply with “all applicable laws, ordinances, field rules,



and other regulations” that have been or may be imposed by the County or other government agencies, for the use of the airport and its operations thereon.

Based on our reading of this language, the 1976 Agreement and the terms contained therein could be considered a “local law, rule or regulation” or an operating standard/requirement imposed by the County as referenced by these sections above. The 1976 Agreement was executed between the City and the County, which are two regulatory agencies with certain powers and jurisdiction over or related to the operations and developments at or near the Camarillo Airport, and remains a valid, enforceable contract. The 1976 Agreement created the Camarillo Airport Authority, which is made up mostly by these two entities, that has certain review authority over developments and permits relating to the airport. Further, the 1976 Agreement specifically included certain limitations on the use of the airport, such as operating hours, noise levels, runway length, and aircraft weight restrictions. It explicitly provides that aircraft weight is limited to 115,000 lbs. Thus, the 1976 Agreement could be interpreted to constitute a local regulation/operating requirement with which the Applicant must comply.

If the County desires to clarify this requirement, it does have the ability to include a provision in the lease through an amendment to the approved lease that would mandate the Applicant to comply with the 1976 Agreement and specifically the weight limitations set forth therein as long as the 1976 Agreement remains in effect.

Cc: Darren Kettle, Executive Director

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