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August 8, 2008

Honorable Pete McHugh
Chairman
Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

Reference: August 12, 2008 Board of Supervisors meeting
Agenda item No. 41 – Report back on Legal Options Relating to Reid-
Hillview Airport

Dear Pete:

As you know, the Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of 415,000 members, more than two-thirds of the nation's pilots- including 50,000 members in the State of California. AOPA is committed to ensuring the future viability and economic development of general aviation airports and their facilities as part of the state and national transportation system. Any activity that threatens the viability of a local airport and the national aviation transportation system causes us great concern. This is especially true as it relates to the continued operation of Reid-Hillview Airport (RHV).

I am writing to express serious concern relating to some of the content of County Counsel's analysis. After carefully reviewing the memo, some of the data included by Counsel is, in our opinion, incomplete, misleading and inaccurate.

The memo states that four options exist for the county (memo page 2 – Reasons for Recommendations). Three of these four items relate directly to the Federal Aviation Administration's Federal Grant Assurances as codified in law under United States Code Title 49 §47107. There are a number of federal court cases that have indeed upheld the FAA's Grant Assurances and the agency's right to enforce those contractual obligations that are entered into between an airport sponsor such as the County and the FAA when federal airport development funds are provided for airport development or land acquisition.

Additionally, while it is true the County could petition the FAA stating the airport is no longer needed for civil aviation purposes, such permission is rarely granted and, in this case, extremely unlikely. In order to receive a favorable decision from the FAA, the airport sponsor must make the case that closing a public-use airport obligated under grant assurances creates a significant benefit to civil aviation. Over recent years, several local governments have petitioned the FAA to allow closure of their municipal airport. All

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were denied when no benefit to civil aviation could be demonstrated. Closing Reid-Hillview Airport would not be a benefit to civil aviation, and it is difficult to see how the County constructs an argument that such a benefit would exist. Based on recent experience, we would expect the FAA to reject such a request.

On page 4 of the memo, under section b. Petition to FAA on the Basis that Reid-Hillview is No Longer Needed for Civil Aviation Purposes, the memo outlines the closure of the Richards-Gebaur Airport in Kansas City, MO.

We believe it is unreasonable to make use of this airport as a comparison of what could occur with Reid-Hillview. As County Counsel correctly notes, Richards-Gebaur was part of a three-airport system. That airport was significantly underused and was not holding its own financially. Additionally, other general aviation airports in the immediate geographic area had significant capacity available both in hangar and tie-down spaces as well as operational runway capacity.

These circumstances bear no similarity to the case with Reid-Hillview. The RHV Airport Enterprise Fund runs positive cash flow. The airport does not lose money each year and does not draw funds from either the County General Fund or other airports (San Martin and Palo Alto) in the County system.

All other general aviation airports in the immediate area are already “at capacity” and have no facilities available to base aircraft that would be displaced should RHV be closed.

Additionally, the U.S. Court of Appeals case challenging the FAA’s decision to allow closure, a proceeding to which AOPA was a party, had little to do with challenging the airport closure as such but rather spoke to the FAA’s authority to grant closure. At question were not only federal grant assurances but also the fact that Richards-Gebaur was deeded to the city under the Federal Surplus Property Act – which contains a number of covenants above and beyond the grant assurances that require the sponsor to keep the facility in service as a public-use airport.

County Counsel also asserts:

“Should the FAA oppose the County’s sale, or lease of, a portion of Reid-Hillview, as a matter of due process, the FAA would have to justify why the airport would continue to be needed for civil aviation purposes.”

In reality, the burden of justifying why the airport is no longer necessary to serve civil aviation falls squarely on the airport sponsor, the County, not the FAA, to make during the petition process.

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County Counsel details several other airport closures on page 5 under the heading c. Closure of Other Municipal Airports. Information included in this section is incomplete. This section details the current issue between the FAA and the City of Santa Monica Airport relating to restricting a category and class of aircraft – something prohibited under FAA Grant Assurances. The memo states that the FAA “blocked” implementation of the restrictions. That is true. However, what is not mentioned is that the City appealed to the U.S. District Court for relief. The federal court upheld the FAA actions under grant assurances.

An example is provided of an airport closure not opposed by the FAA. That airport was Robert-Mueller Airport in Austin, TX. However, significant details regarding this issue are missing from the memo.

Robert-Mueller Airport was an airline airport much like San Jose International with both airline and general aviation operations. The airport was significantly restricted and did not have the ability to obtain additional land needed for airport expansion of facilities; something the airport desperately needed to accommodate larger airline flights.

Under the federal Base Realignment and Closure (BRAC) law, the Bergstrom Air Force Base was targeted for closure (only about 3 miles southeast of Robert-Mueller) and offered to the City of Austin for use as an airport. Seizing on the opportunity to acquire an airport that would accommodate the city’s future airline needs, operations from Robert-Mueller Airport were relocated to Bergstrom. The Robert-Mueller airport closure was a SWAP for another local airport, which would increase capacity. With the larger facility at Bergstrom, the FAA rightfully determined there would be a significant benefit to civil aviation in allowing the transfer.

Meigs Field in the City of Chicago is yet another example discussed in the memo. The memo notes that the airport was not acquired with federal funds – something that is only a portion of the equation. Grant assurances apply not only to land purchased with federal funds but also airport development funds provided by the FAA to develop and improve an airport.

It is extremely important to note that Meigs Field was not federally obligated under federal grant assurances. All previous grant assurances had expired – which is not the case with RHV. RHV is obligated to the federal government under grant assurances that cover both acquisition of land with federal funds as well as airport development funding. Meigs Field was essentially “private” property owned by the city of Chicago.

County Counsel’s memo to the Board concludes by stating:

“Should the Board determine that it wishes to pursue the sale or lease of the Reid-Hillview Airport, the legal procedures would be extremely complex and lengthy. In addition to the administrative processes of the FAA and possible ensuing litigation, the County would be required to adhere to the CEQA process.”

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AOPA agrees completely with County Counsel's conclusion. The FAA has gone to great lengths to defend airports like Reid-Hillview Airport at all costs – especially when the airport is as important to the transportation system as Reid-Hillview. The agency has indicated to us that they are prepared to take any and all action necessary to ensure that the airport continues to be operated as a publicly owned, public-use airport. Based on our extensive experience with the FAA, the agency is quite aggressive in protecting the federal investment in public-use airports. We are certain that should the Board take any action leading to an effort to close the airport, that action will be met with expensive and lengthy litigation. Additionally, AOPA will work diligently taking any action necessary to ensure RHV remains open and available to meet aviation transportation demands just as we have with previous efforts to close the airport.

For these reasons, we urge you to take no further action to close Reid-Hillview Airport.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Dunn", with a long horizontal flourish extending to the right.

Bill Dunn
Vice President
Local Airport Advocacy

cc: Honorable Don Gage
District 1

Honorable Blanca Alvarado
District 2

Honorable Ken Yeager
District 4

Honorable Liz Kniss
District 5

Mark McClardy, Manager
FAA Western Pacific Regional Office
Airports Division