

# **Solano County**

*675 Texas Street  
Fairfield, California 94533  
[www.solanocounty.com](http://www.solanocounty.com)*

## **Agenda - Final**

**Thursday, November 10, 2016**

**7:00 PM**

**Board of Supervisors Chambers**

**Airport Land Use Commission**

Any person wishing to address any item listed on the Agenda may do so by submitting a Speaker Card to the Clerk before the Commission considers the specific item. Cards are available at the entrance to the meeting chambers. Please limit your comments to five (5) minutes. For items not listed on the Agenda, please see "Items From the Public".

Any person wishing to review the application(s) and accompanying information may do so at the Solano County Department of Resource Management, Planning Division, 675 Texas Street, Suite 5500, Fairfield, CA. Non-confidential materials related to an item on this Agenda submitted to the Commission after distribution of the agenda packet are available for public inspection during normal business hours and on our website at [www.solanocounty.com](http://www.solanocounty.com) under Departments, Resource Management, Boards and Commissions.

The County of Solano does not discriminate against persons with disabilities and is an accessible facility. If you wish to attend this meeting and you will require assistance in order to participate, please contact Kristine Sowards, Department of Resource Management at (707) 784-6765 at least 24 hours in advance of the event to make reasonable arrangements to ensure accessibility to this meeting.

## **AGENDA**

### **CALL TO ORDER**

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

### **APPROVAL OF AGENDA**

### **APPROVAL OF THE MINUTES**

[AC 16-023](#) Minutes of September 8, 2016

Attachments: [Minutes](#)

[AC 16-024](#) Minutes of October 13, 2016

Attachments: [Minutes](#)

### **REPORTS FROM COMMISSIONERS AND/OR STAFF**

### **ITEMS FROM THE PUBLIC**

*This is your opportunity to address the Commission on a matter not heard on the*

*Agenda, but it must be within the subject matter jurisdiction of the Commission. Please submit a Speaker Card before the first speaker is called and limit your comments to five minutes. Items from the public will be taken under consideration without discussion by the Commission and may be referred to staff.*

## REGULAR CALENDAR

### OLD BUSINESS

*There is no old business to discuss.*

### NEW BUSINESS

- 1 [AC 16-025](#) Public Hearing to consider a Consistency Determination ALUC-16-07 for the proposed County Marijuana Ordinance with the Travis Air Force Base Land Use Compatibility Plan, the Nut Tree Airport Land Use Compatibility Plan and the Rio Vista Airport Land Use Compatibility Plan (Sponsor: County of Solano)

**Attachments:** [A - Personal Cannabis Cultivation Ordinance](#)

- 2 [AC 16-026](#) Receive an update from staff regarding the progress of the Wildlife Hazards Working Group

- 3 [AC 16-027](#) Receive an update from staff regarding the progress of the Renewable Energy Working Group

### ADJOURN

*To the Airport Land Use Commission meeting of December 8, 2016 at 7:00 P.M., Board Chambers, 675 Texas Street, Fairfield, CA*



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## Agenda Submittal

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**Agenda #:** **Status:** ALUC Minutes  
**Type:** ALUC-Document **Department:** Airport Land Use Commission  
**File #:** AC 16-023 **Contact:**  
**Agenda date:** 11/10/2016 **Final action:**  
**Title:** Minutes of September 8, 2016

**Governing body:**

**District:**

**Attachments:** [Minutes](#)

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

**Solano County Airport Land Use Commission**



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**Bruce DuClair**  
Vice-Chairman

**DRAFT**  
**MINUTES OF THE**  
**SOLANO COUNTY AIRPORT LAND USE COMMISSION**  
**MEETING OF SEPTEMBER 8, 2016**

The meeting of the Solano County Airport Land Use Commission was held in the Solano County Administration Center, Board of Supervisors Chambers (1<sup>st</sup> floor), 675 Texas Street, Fairfield, CA.

**MEMBERS PRESENT:** Commissioners Baldwin, Baumler, Vancil, Randall, Meyer, Sagun and Chairman DuClair

**MEMBERS ABSENT:** Commissioner Cavanagh

**OTHERS PRESENT:** Jim Leland, Resource Management; Lee Axelrad, County Counsel; Diane Gilliland, Resource Management

**Call to Order & Roll Call**

Chairman DuClair called the meeting to order at 7:00 p.m. Roll call was taken and a quorum was present.

**Approval of the Agenda**

The agenda was approved as prepared.

**Approval of the Minutes**

The minutes of the meeting of June 9, 2016 were approved as prepared.

**Reports from Commissioners and/or Staff**

There were no committee reports.

**Items from the Public**

There was no one from the public wishing to speak.

**Old Business**

There was no old business to discuss.

**New Business**

1. Public hearing to consider the consistency of ALUC-2016-03, **Suisun City Waterfront Plan**, with the Travis AFB Land Use Compatibility Plan (Travis Plan).

Jim Leland briefly summarized staff's written report. The report indicated that the City of Suisun City is considering the adoption of its Waterfront District Specific Plan. A specific plan is an addition to a general plan which can provide significant additional detail on the types of land uses permitted, the development standards applicable to those land uses, the design standards for the project and any public financing mechanism for improvements required by the specific plan development. The Waterfront District Specific Plan is an implementation of the 2035 General Plan, which was

determined to be consistent with the Travis Plan on January 8, 2015. Staff is recommending the commission find the plan consistent.

Since there were no questions of staff, Chairman DuClair opened the public hearing. There were no speakers either for or against this matter therefore the public hearing was closed.

A motion was made by Commissioner Baumler and seconded by Commissioner Sagun to determine the Waterfront Plan is consistent with the Travis AFB Land Use Compatibility Plan with the addition of the following condition of approval: Notwithstanding any other provisions of this Specific Plan, all development and associated public improvements and environmental mitigations shall be consistent with the Travis Air Force Base Land Use Compatibility Plan Update as adopted on October 8, 2015 (Resolution 15-17). The motion passed unanimously (Resolution No. 16-03)

2. Public hearing to consider the consistency of ALUC-2016-04, **Benicia Zoning Changes** with the Travis AFB Land Use Compatibility Plan (Travis Plan)

Jim Leland gave a brief presentation of staff's written report. The report stated that the City of Benicia is proposing changes to its zoning regulations which modify regulations pertaining to family daycare centers and density bonus provisions for affordable housing projects. The specifics of each set of zoning regulations were described in the staff report. Staff is recommending the commission find the zoning changes consistent with the Travis Plan.

Since there were no questions of staff, Chairman DuClair opened the public. There were no speakers either for or against this matter. The public hearing was closed.

A motion was made by Commissioner Vancil and seconded by Commissioner Meyer to find Application ALUC-2016-04 (Benicia Zoning Changes) is consistent with the Travis AFB Land Use Compatibility Plan (Travis Plan). The motion passed unanimously. (Resolution No. 16-04)

3. Receive an update from staff regarding potential regulation of drones.

Jim Leland informed the commission that staff will bring forward an action item on the subject of drones most likely at the commission's next regular meeting. Staff will ask the commission to constitute a working group to deal with the drone issue. He provided a graphic to give some ideas as to who would be appropriate for the working group and the kinds of issues that will need to be addressed. He provided some detail with regard to FAA regulations.

Commissioner Randall wanted to know what would be considered an airport with regard to drones. Mr. Leland responded by saying that the model for that answer is in how communities have dealt with model airplanes, noting that there are designated model airplane landing fields in existence. He said an airport for a drone can be defined under land use authority so the commission can designate whatever parameters they want for where it can be located. Mr. Leland said there is plenty of support for local communities to create zoning definitions for those launching areas which can be regulated as to how many can be in a community and where they can be located.

Commissioner Vancil inquired if any of our local cities have shown interest in this issue. Mr. Leland noted that there was a recent article published by the League of California Cities showing research is currently being pursued for four communities on the subject of drones; Chicago, Miami, Santa Clara and San Jose.

Chairman DuClair said that he can foresee law enforcement or other municipality using drones for official use and therefore having an abundance of airports for take-offs and landings. Mr. Leland

said law enforcement or other public agency use of drones are regulated differently, and noted that the rules the commission will be discussing are the FAA rules for recreational use.

Commissioner Meyer said that not only is this an airspace issue it is also a safety issue because of the hazard that accessories such as cameras, and the like can pose because they can fall off when the drone is in use. She believed this concern should be a part of the discussion as well.

Commissioner Sagun asked if staff knows how many documented incidents or reports of hazards have been made and what types of problems have been seen so far. Lee Axelrad stated that it is increasing year by year; for example, in 2014, pilots reported 238 interactions with suspected drones and in the first 9 months of the following year, 2015, that number tripled to 780. He said with the increased proliferation of drones since that time he would venture a guess that the number of sightings and incidents have since increased. He said 90% of the sightings described were above 400 feet.

Commissioner Randall noted that there will be the issue of inexperienced drone operators who are not familiar with its operation and could cause damage to property. He wanted to know if this aspect will be included as a part of the review process. Mr. Leland stated that there is currently no certification program for recreational users.

Staff will have further information with regard to the potential regulation of drones at the October meeting.

4. Receive a report from staff regarding the update to the Rio Vista Airport Land Use Compatibility Plan.

Jim Leland informed the commission that the consultants who are working on the update have moved out of the data gathering phase and into the phase where they will be drafting the preliminary plan. He noted that the new information should be available in November of this year and at that time staff will make a presentation before the commission. Staff is hoping to have the plan before the commission and ready for adoption sometime next spring.

5. Receive an update from staff regarding the implementation program for the Travis AFB Land Use Compatibility Plan.

Mr. Leland stated that there is an implementation program in the Travis Plan that calls for the county to look more deeply into two subject matters; wildlife hazards and windfarm repowering. He stated that both the Wildlife Hazards and Windfarm Repowering subcommittees have held several meetings and are about to wrap up their work and bring it before the commission for consideration as early as October. Mr. Leland noted that strides have been made on the wildlife side concerning habitat species and designating the location of habitat within the county. Regarding wind power, the subcommittee is resolved on what they want to do about a policy for the individual replacement of a single tower that suffers a catastrophe loss. They have a workable solution to present to the commission on what the parameters would be to replace one of those turbines. One position where there has been no resolve as of yet pertains to when a windfarm reaches the end of its economic life and the company wants to repower it to new bigger better turbines.

Staff will return with more to report on this item at the October meeting.

### Adjournment

Since there was no further business, the meeting was adjourned.



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## Agenda Submittal

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**Agenda #:**  
**Type:** ALUC-Document  
**File #:** AC 16-024  
**Agenda date:** 11/10/2016  
**Title:** Minutes of October 13, 2016

**Status:** ALUC Minutes  
**Department:** Airport Land Use Commission  
**Contact:**  
**Final action:**

**Governing body:**

**District:**

**Attachments:** [Minutes](#)

| Date | Ver. | Action By | Action | Result |
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**Solano County Airport Land Use Commission**



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**Bruce DuClair**  
Vice-Chairman

**DRAFT**  
**MINUTES OF THE**  
**SOLANO COUNTY AIRPORT LAND USE COMMISSION**  
**MEETING OF OCTOBER 13, 2016**

The meeting of the Solano County Airport Land Use Commission was held in the Solano County Administration Center, Board of Supervisors Chambers (1<sup>st</sup> floor), 675 Texas Street, Fairfield, CA.

**MEMBERS PRESENT:** Commissioners Baldwin, Vancil, Randall, Meyer, Sagun, and Chairman DuClair

**MEMBERS ABSENT:** Commissioners Cavanagh and Baumler

**OTHERS PRESENT:** Jim Leland, Resource Management; Lee Axelrad, County Counsel; Kristine Sowards, Resource Management

**Call to Order & Roll Call**

Chairman DuClair called the meeting to order at 7:00 p.m. Roll call was taken and a quorum was present.

**Approval of the Agenda**

The agenda was approved as prepared.

**Approval of the Minutes**

There were no minutes available for approval.

**Reports from Commissioners and/or Staff**

There were no committee reports.

**Items from the Public**

There was no one from the public wishing to speak.

**Old Business**

There was no old business to discuss.

**New Business**

1. Public hearing to consider the consistency of ALUC-2016-05, the City of Vallejo General Plan Project, with the Travis AFB Land Use Compatibility Plan.

Jim Leland gave a brief presentation of staff's written report. This Project is essentially rearranging some of the residential, commercial and industrial land uses within the City and includes a specific plan to develop a set of policies and projects to promote the redevelopment of the southern stretch of Sonoma Boulevard. The Project does not include any rules or standards for wind or solar projects, nor does it deal with the height of objects. The current zoning regulations limit the allowed height of objects to 100 feet above ground level.

Since the General Plan Project does not address those development aspects regulated in Zones D and E of the Travis Plan, staff is recommending that the Commission make the determination that the Vallejo General Plan Project is consistent with the Travis Plan.

In response to Commissioner Vancil, Mr. Leland stated that nearly all of Vallejo would be exempted from the line-of-sight limitation but there are portions of the hills around Hiddenbrooke where, depending on the height of the tower, there might be some infringement. Mr. Leland commented that none of this is allocated in the general plan so the county would have to look at the zoning requirements at the time wind turbines are proposed.

Chairman DuClair opened the public hearing. Since there were no speakers either for or against the matter, the public hearing was closed.

A motion was made by Commissioner Randall and seconded by Commissioner Sagun to find that application ALUC-2016-05, City of Vallejo General Plan Project, is consistent with the Travis AFB Land Use Compatibility Plan (Travis Plan); the Vallejo General Plan Project lead to some revisions to the City's Zoning Regulations which will require a subsequent ALUC review of the future zoning code revisions for consistency with the Travis Plan. The motion passed unanimously. (Resolution No. 16-05)

2. Update from staff regarding the progress of the Wildlife Hazards Working Group.

Mr. Leland stated that the group has been making progress and expect to have a report available in December with final recommendations. He explained that the group had two principal charges: one was to see if there are any projects the county would be willing to make exempt from the need for a wildlife hazard assessment because they are so deminimis; and the other charge was to take a look at the Solano County Water Agency's Habitat Conservation Plan and make a preliminary determination or recommendation that it is consistent with the Travis Plan. Mr. Leland stated that the committee seems to have a list developed of deminimis projects, and no one has been writing recently to add any further items for consideration. He believed the list will probably be adopted at the next committee meeting and forwarded to the commission.

Commissioner Meyer spoke with regard to the potential increase in birds if more wetlands are established and inquired if there is any work being done with the Sacramento Airport for wildlife mitigation. She commented that the airport is one of the highest bird strike airports on the west coast.

Mr. Leland stated that at the local level with the water agency, the cities, and the county, we will be in good shape in terms of steering any future wetland development away from Travis, and design it in such a way that it does not attract the largest of the birds. He said there are already bird populations in existence because the county already has existing wetlands. He commented that the biggest problem is the State policies that are directing state sponsored wetland development in Solano, Yolo and Sacramento counties and the scale of that is vast in comparison to the small projects generated at the local level. He said the county is going to have to address that in the near term and he believed staff would be coming before the commission to talk about options.

3. Update from staff regarding the progress of the Renewable Energy Working Group

Jim Leland stated that the renewable energy group has also been making progress. They had two items they were given charge to look at. The easier task was to develop a policy about existing wind turbines and whether or not they can be replaced and in which manner if a catastrophic failure were to occur. He believed that the group has submitted a policy that is going to allow them to replace the turbines with something that is of not much concern to radar operations at the Base. They will not be limited by line-of-sight when they are replacing an existing wind turbine and it is probably not of concern because it does not happen often. The other item being looked at is whether there are some criteria other than line-of-sight that could be used or recommended for the Montezuma Hills area of the county. As of right now,

the group has nothing to offer although they have explored several paths but ended up realizing those ideas were not going to work out. Mr. Leland said that they are expecting some information from the SMUD representative who sits on the committee to see if there is another avenue to explore. Mr. Leland commented that either way they are going to have to come to a recommendation by December so that this can come before the commission for guidance or final decision.

4. Update from staff regarding potential regulation of drones.

Lee Axelrad provided an update on staff's effort to craft a path toward the commission considering some regulation of drones. At the last presentation, staff discussed in some detail the commission's traditional role in the areas of land use, and tonight Mr. Axelrad talked about some of the other authorities the commission holds. Staff is planning to bring forth a work plan to the commission in December. Mr. Axelrad explained that powers of the commission as set forth in the State Aeronautics Act can be grouped into three areas: assisting and coordinating with local agencies to ensure compatible land uses around aviation; preparing and adopting land use compatibility plans; and examining local plans and regulations for review. Mr. Axelrad spoke more specifically on these three issues. He also spoke to the role of the FAA on regulating aircraft including drones. He reviewed the areas of the work plan that will come before the commission in December.

Commissioner Sagun inquired as to what kinds of issues the commission will be considering aside from the matters already regulated by the FAA or handled by law enforcement.

Mr. Leland stated that the missing piece from the FAA relates to conventional piloted aircraft. He said the FAA imposes rules on the two components which relate to where takeoffs and landings can take place. He said that local government has a say on where the airports can be placed, but once an area is designated the FAA has rules about what path can be used for takeoff or landing. The closer the area is to the airport, the less likely approval will be granted for residences or places with immobile populations because of accident prone zones. With respect to drones, Mr. Leland stated that the FAA has elected not to regulate where you can launch and recover them from. They gave away the airspace at less than 400 feet which is also creating problems because they generally want the aircraft they regulate above 500 feet to create a separation between the cities below. Mr. Leland stated that this is an area he expects local government will want to control. He commented that trespassing is also an issue and these are the kind of issues the county will probably want to examine. He felt that the principle argument will be about what the rules are concerning launch and recovery sites.

Commissioner Vancil commented with regard to the wind turbines that were approved in 2009. He said the turbines were beginning to be constructed and folks in the area liked them, but then complaints started to roll in about problems of them impacting radar at Travis AFB. Ultimately, by the commission stepping into the role of assisting and coordinating with local and regional planning, a working group was formed and interested parties came together to help solve the issues. Commissioner Vancil said he could anticipate that effort happening here as well. He commented that there is not currently a clearly defined problem, but the FAA is presently working on their own issues with drones and in the future there will be a point where local agencies will have to ensure some kind of regulation. For Solano County Travis AFB will undoubtedly be one of the focus points for drone activity because of safety and security issues surrounding the base, and there could be local law enforcement issues that arise as well. Mr. Vancil believed the county has a role in being an assisting agency because of the existing coordination the county has with the FAA.

Mr. Leland stated that a significant component of the work plan that is being developed is doing exactly what Commissioner Vancil intimated; to acquire experts from a variety of Stakeholder groups to inform staff if there is a problem and to define those problems. He said that staff does not have a set of regulations ready to bring forward to the commission, but are only asking the questions to get feedback.

Commissioner Meyer spoke with regard to the issue of drones flying over public property such as a public swimming pool or public event venue with large groups of people, and the potential risk of the drone falling into the crowd causing a safety hazard and likely injury. She inquired about possible interference in public areas with law enforcement activities and wanted to know the anticipated course of action with regard to that issue.

Mr. Leland explained that the regulations local governments are starting to adopt tend to deal with the issue of public airspace. Several jurisdictions are adopting local laws that prohibit flying a drone over a particular stadium or park and the like. The FAA rules say that a drone cannot be flown over a human being. He noted that some of the work the committee may need to look at may involve looking at the obligations of local law enforcement.

Commissioner Sagun commented that this could potentially cause a chain of events, for example if the county decides they do not want drones flying over public assembly areas where large concentrations of people gather, then what about such things as kites being flown over a large gathering. Commissioner Sagun noted his point being the need to proceed carefully so there is not over regulation and we actually solve a problem that exists and not go down a path of negativity toward drones.

Commissioner Randall said that he agrees that we should be careful not to over regulate this use. He also mentioned the need to examine the regulations as they relate to fixed objects for example wind turbines.

Mr. Axelrad informed the commission that they have great flexibility in addressing these issues in a way that makes sense. There is high flexibility in the commission's considerations because of the number of drones in the air today are the fewest that will ever be. As time passes it will become harder to fix the problems and so that is why staff is asking these questions at an early juncture so that the commission can point them in the right direction.

### Adjournment

Since there was no further business, the meeting was adjourned.



5. Distribution centers,
6. Transportation operations, and
7. Sales and delivery to consumers 21 and over

The initiative also allows some local control and regulation for most of these activities within the local jurisdiction. However, the personal cultivation may not be prohibited by local jurisdictions, although controls and regulations may be placed on the personal cultivation of marijuana.

The County of Solano is considering adopting controls over personal cultivation to prohibit outdoor cultivation, requiring instead that all personal cultivation occur inside the user's residence or other permanent building on the parcel (See Appendix A). Otherwise, the County of Solano intends to prohibit the commercial cultivation, testing, manufacture, distribution, sales and delivery of recreational marijuana in the unincorporated areas of the county.

The County has submitted a request for a consistency determination on its proposed zoning regulations placing controls on the cultivation of marijuana for personal use.

Staff has reviewed the proposed ordinance for consistency with the Travis AFB Land Use Compatibility Plan (Travis Plan), the Nut Tree Airport Land Use Compatibility Plan (Nut Tree Plan) and the Rio Vista Airport Land Use Compatibility Plan (Rio Vista Plan).

#### **ALUCP Review Requirements**

State law, under Section 21676 of the Public Utilities Code, requires that any proposed zoning regulations or revisions to the local zoning ordinance be reviewed for consistency with adopted airport land use compatibility plans. The proposed County Marijuana Ordinance therefore requires a consistency determination from the Airport Land Use Commission.

#### **REQUIRED TESTS FOR CONSISTENCY**

California Airport Land Use Planning Handbook (2011)

The State Department of Aeronautics has published the California Airport Land Use Planning Handbook (2011) as a guide for Airport Land Use Commissions in the preparation and implementation of Land Use Compatibility Plans and Procedure Documents. Section 6.4.2 (p. 6-14) sets forth procedures for the review of local zoning ordinances and directs agencies to consider the topics listed in Table 5A, as follows:

#### **Zoning or Other Policy Documents** (from Table 5A, CalTrans Airport Land Use Planning Handbook)

The Handbook lists the following topics for consideration when reviewing zoning or other policy documents.

1. Intensity Limitations on Nonresidential Uses
2. Identification of Prohibited Uses
3. Open Land Requirements
4. Infill Development
5. Height Limitations and Other Hazards to Flight
6. Buyer Awareness Measures
7. Non-conforming Uses and Reconstruction

Staff has reviewed the proposed County Marijuana Ordinance in light of the tests outlined above. Our analysis is

presented below.

## DISCUSSION

The proposed County Marijuana Ordinance applies to all properties located within the unincorporated county which permit dwellings or contain dwellings. As previously stated, the project would need to be reviewed for consistency with the Travis Air Force Base Land Use Compatibility Plan, the Nut Tree Airport Land Use Compatibility Plan and the Rio Vista Land Use Compatibility Plan.

The list of criteria from Table 5A (above) includes seven topics to be reviewed when conducting the consistency determination, which are discussed below:

1. Intensity Limitations on Nonresidential Uses

The County Marijuana Ordinance established regulations which pertain to the cultivation of marijuana for personal use in certain types of residential structures. Consequently, the ordinance does not change existing zoning regulations for non-residential uses. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

2. Identification of Prohibited Uses

The County Marijuana Ordinance does not make any changes to current zoning regulations in terms of prohibited land uses. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

3. Open Land Requirements

The County Marijuana Ordinance permits personal marijuana cultivation inside a private residential structure or permanent accessory structure in conformance with specified performance and operational standards. No aspect of the proposed ordinance alters or modifies existing zoning regulations pertaining to open land area requirements. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

4. Infill Development

The County Marijuana Ordinance does not make any changes to current zoning regulations with respect to expansion of infill development. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

5. Height Limitations and Other Hazards to Flight

The County Marijuana Ordinance does not make any changes to current zoning regulations with respect to height limitations or other physical development standards which might be considered hazards to flight in certain locations. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

6. Buyer Awareness Measures

The County Marijuana Ordinance permits personal marijuana cultivation inside a private residential structure or permanent accessory structure in conformance with specified performance and operational standards. Buyer awareness measures, when required by airport land use compatibility plans, are imposed at the time of residential rezoning or subdivision map approval. The ordinance makes no changes or amendments to those provisions. As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

7. Non-conforming Uses and Reconstruction

The County Marijuana Ordinance does not make any changes to the rules for non-conforming uses and structures, or their reconstruction rights.

As a result, the ordinance is consistent with the land use compatibility plans with respect to this item.

As can be seen from the discussion above, the limited scope of the County Marijuana Ordinance does not infringe upon any of the regulatory matters contained in our land use compatibility plans and is therefore consistent with those plans.

## **RECOMMENDATION**

Based on the analysis and discussions above, Staff recommends that the Solano County Airport Land Use Commission find as follows:

**Determination:** Determine that application ALUC-2016-07, County of Solano Marijuana Ordinance, is consistent with the Travis AFB Land Use Compatibility Plan (Travis Plan), the Nut Tree Airport Land Use Compatibility Plan (Nut Tree Plan) and the Rio Vista Airport Land Use Compatibility Plan (Rio Vista Plan).

## **Attachments:**

Attachment A: Proposed County Marijuana Ordinance

ORDINANCE NO. 2016-\_\_\_\_\_

**AN ORDINANCE AMENDING SECTIONS 28.21, 28.22, 28.23, 28.24, 28.30, 28.31, 28.32, 28.40, 28.41, 28.42, 28.43, 28.50, 28.51, 28.52, 28.61 AND ADDING SECTION 28.82 TO REGULATE CANNABIS CULTIVATION FOR PERSONAL USE IN UNINCORPORATED SOLANO COUNTY**

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The Board of Supervisors of Solano County do hereby ordain as follows:

SECTION I. Findings

The Board finds and declares that the adoption of this Ordinance is necessary and desirable to ensure that environmental, public health, safety and nuisance factors related to the cultivation of cannabis for personal use are adequately addressed.

- A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis as a Schedule I Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess cannabis, whether for medical or recreational purposes.
- B. In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act (Health and Safety Code Section 11362.5), which was intended to provide a defense to criminal charges for the cultivation and possession of medical cannabis by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use. The Compassionate Use Act further provided that nothing in it shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non-medical purposes.
- C. SB 420, the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.), was enacted in 2004 to expand and clarify the scope of Proposition 215 by creating the Medical Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering medical cannabis, as well as limiting the amount of medical cannabis a qualified individual may possess.
- D. SB 420 defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- E. The State enacted the Medical Marijuana Regulation and Safety Act (MMRSA) on September 11, 2015 (SB 643, AB 266, and AB 243), instituting a comprehensive state-level licensure and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis. Although MMRSA provides that patients may cultivate up to 100 square feet of cannabis for their personal use, and caregivers may cultivate up to 500 square feet of cannabis for the personal use of up to five patients, cities and counties retain local regulatory authority over medical cannabis, including personal cultivation.
- F. The Governor signed SB 837 on June 27, 2016, changing references to the term "marijuana" in MMRSA to "cannabis" and renaming MMRSA the "Medical Cannabis Regulation and Safety Act" (MCRSA).
- G. On November 8, 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was enacted by the voters to decriminalize and regulate commercial and non-

commercial recreational cannabis. AUMA provides that cities and counties retain local regulatory control over recreational cannabis, but personal cultivation of up to six plants must be allowed inside a private residence or in a secured structure on the grounds of a private residence.

- H. In response to MCRSA and AUMA, the Board of Supervisors, at an open public meeting, directed staff to bring forward a zoning ordinance allowing but regulating medical and recreational personal cannabis cultivation indoors for personal use within the jurisdictional boundaries of Solano County.
- I. The unregulated cultivation of cannabis in the unincorporated area of Solano County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for personal cannabis cultivation, including zoning regulation, is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation.
- J. Children are particularly vulnerable to the effects of cannabis use and the presence of cannabis plants or products is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children, such as schools, parks, and other similar locations.
- K. Outdoor cannabis cultivation, especially within the remote areas, is creating significant impacts to California's surface and groundwater resources. The State Water Resources Control Board, the San Francisco Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of cannabis cultivation operations, and corresponding increases in impacts to water supply and water quality, including the discharges into water of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.
- L. The ability to cultivate cannabis plants for medical or recreational purposes conferred by MCRSA and AUMA does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter in coordination with MCRSA and AUMA, the County intends to minimize the risks and complaints regarding fire, odor, crime and pollution caused or threatened by the unregulated cultivation of cannabis in the unincorporated area of Solano County.
- M. Nothing herein shall be construed to allow the cultivation or use or allow any activity relating to the cultivation or use of cannabis that is otherwise illegal under State law.

## SECTION II.

The Residential Allowed Uses in the Tables of Allowed Uses in sections 28.21, 28.22, 28.23, 28.24, 28.30, 28.31, 28.32, 28.40, 28.41, 28.42, 28.43, 28.50, 28.51, 28.52, 28.61 of Article II, Chapter 28 are hereby amended to include indoor cultivation of cannabis in a residence or on the grounds of a residence, subject to the land use regulations at section 28.82, in all zones where a residence is a use allowed by right as shown below:

## RESIDENTIAL USES

### DWELLINGS:

Primary

Secondary

Indoor Personal Cannabis Cultivation                      A=allowed by right                      Section    28.82

## SECTION III.

Section 28.82 is added to Article III, Chapter 28 of the Solano County Code to read as follows:

### 28.82 Indoor Personal Cannabis Cultivation Uses

#### A. General Requirements.

1. Personal cannabis cultivation indoors in a residence or inside a permanent residential accessory structure on the grounds of a residence shall be allowed if it meets the standards in the applicable zoning districts and complies with all applicable California and County laws.
2. Personal cultivation of cannabis outdoors, as defined herein, is prohibited.

#### B. Definitions

1. Cannabis: all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.
2. Cannabis Cultivation: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical or personal use that is intended for use by a) medical cannabis patients in accordance with the Medical Cannabis Regulation and Safety Act (MCRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215); or b) recreational cannabis users in accordance with the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA).
3. Cannabis Cultivation Indoors: indoor cultivation of cannabis exclusively using artificial lighting.
4. Cannabis Cultivation Outdoor: outdoor cultivation of cannabis exclusively outdoors, using natural light and not within a structure. Cultivation inside a hoophouse, greenhouse or similar shall be deemed outdoor cultivation.

5. Canopy (plant): the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed, clones, including plants in vegetative or flowering states.
6. Caregiver Cultivation: cultivation by a primary caregiver of up to 500 square feet of medical cannabis for up to 5 individuals with “Medical Marijuana Identification Cards” or qualified patients.
7. Cultivation Room: the premises, leased area, property, location or structure where cannabis is planted, grown, harvested, dried, cured, graded, and trimmed for personal use.
8. Medical Marijuana Identification Card: document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.
9. Primary Caregiver: an individual who is designated by a qualified patient or by a person with a Medical Marijuana Identification Card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health & Safety Code section 11362.7(d), as may be amended.
10. Qualified Patient: a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have a Medical Marijuana Identification Card, as defined in Health and Safety Code section 11362.7(f), as may be amended.

#### C. Personal Cultivation Amounts

1. Individuals over 18 with a Medical Marijuana Identification Card may cultivate up to 100 square feet of medical cannabis for their own use inside a private residence or in a permanent residential accessory structure located on the grounds of a private residence.
2. Individuals designated as the primary caregiver of individual(s) with a Medical Marijuana Identification Card” may cultivate up to 500 square feet of medical cannabis inside a private residence or in a permanent residential accessory structure on the grounds of a private residence for up to 5 card-holders upon obtaining a permit from the County.
3. Individuals over 21 may cultivate up to 6 cannabis plants for their own recreational use inside a private residence or in a permanent residential accessory structure located on the grounds of a private residence.

#### D. Personal Cultivation Standards

1. The cultivation must occur indoors in either a residence or in a permanent residential accessory structure on the grounds of a residence that is occupied by the person for whom the cannabis is intended.

2. The cultivation must occur in a secured and locked room that is not accessible to household visitors or children.
3. No one under 18 may enter a medical cannabis cultivation room, and no one under 21 may enter a recreational cannabis cultivation room.
4. Cultivation may not occur in both a residence and a permanent residential accessory structure on the grounds of a residence.
5. No sign of cannabis cultivation shall be visible from outside of the cultivation room.
6. The residence or the permanent residential accessory structure on the grounds of the residence used for cultivation must have a building permit and comply with all building, electrical, fire, and other codes adopted by the County. The Building Official shall refer the building permit application to the Director of Resource Management, appropriate Fire District and law enforcement agencies for review and approval.
7. Light from the indoor cultivation must not be visible from outside the cultivation room. Indoor grow lights shall not exceed one thousand two hundred (1,200 W) watts per 100 square feet of growing space and shall comply with the building, electrical and fire codes as adopted by the County.
8. Gas products (including, but not limited to CO<sub>2</sub>, butane, propane, and natural gas) or ozone generators shall not be used in or for any cultivation room.
9. No open flame or burning of any substance may occur in the cultivation room.
10. Personal cannabis cultivator shall prevent cannabis plant odor from becoming a public nuisance to surrounding properties or the public. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public. Should the operation be determined a public nuisance, a filtered ventilation system shall be installed, operated and maintained to minimize the odor impacts.
11. The cultivation room must be solely devoted to cultivation and may not be used for any other purpose such as sleeping, cooking, bathing, hobbies, or recreation.
12. The use of generators to power any cultivation equipment is prohibited, except as an emergency back-up system.
13. The cultivation site must have an on-site water supply source adequate to meet all on-site uses.
14. The use of pesticides, fungicides, and other substances not approved for use on cannabis shall not be used or allowed on the cultivation site.

### E. Registration

All individuals who intend to cultivate cannabis for personal use must register yearly and supply the County with the following information:

- a. Proof of legal ownership of the parcel or written documentation from a landlord that the applicant has permission to cultivate cannabis at the subject location.
- b. The name of each person occupying or having possession of the premises where cultivation will occur.
- c. Plot plan of where the cultivation will occur on the property.
- d. Signed consent form authorizing County personnel to conduct an inspection of the cultivation site upon 24 hours' notice.
- e. Declaration signed under penalty of perjury that the applicant will abide by the requirements of state law and this Chapter.
- f. Acknowledgement that registration automatically expires after one year, at which time a new application for registration must be made and that no cultivation may occur prior to issuance of registration or if the registration has expired.

### F. Permitting

All individuals who intend to cultivate cannabis as a primary caregiver must obtain a yearly permit from the County and supply the following information:

- a. Proof of legal ownership of the parcel or written documentation from a landlord that the applicant has permission to cultivate cannabis at the subject location.
- b. The name of each person occupying or having possession of the premises where cultivation will occur.
- c. A copy of the Medical Marijuana Identification Card and contact information for each individual the primary caregiver is cultivating for.
- d. Plot plan of where the cultivation will occur on the property.
- e. Signed consent form authorizing County personnel to conduct an inspection of the cultivation site upon 24 hours' notice.
- f. Declaration signed under penalty of perjury that the applicant will abide by the requirements of state law and this Chapter.
- g. Acknowledgement that a permit automatically expires after one year, at which time a new permit application must be made, and that no caregiver cultivation may occur prior to issuance of a permit or if the permit has expired.

### G. Fees

The Board may establish a fee required to be paid upon submitting a registration or permit application as provided herein to recover the reasonable costs of administering this section.

H. Confidentiality

To the extent permitted by law, any personal or medical information submitted with a cannabis cultivation registration application or permit application shall be kept confidential and shall only be used for purposes of administering this section.

I. Enforcement

It is hereby declared unlawful and a public nuisance for any person to cultivate cannabis for personal use except as provided for in this Chapter. The County may elect to pursue any and all available administrative remedies and civil causes of action to enforce this Section.

SECTION IV. Environmental Determination.

In accordance with the California Environmental Quality Act (CEQA), it has been determined that the project is exempt from further environmental review under the General Rule Exemption of Section 15060(c)(2) of Title 14 of the California Code of Regulations because the project will not result in a direct or reasonably foreseeable indirect physical change in the environment. The Director of Resource Management is directed to file a Notice of Exemption in accordance with CEQA.

SECTION V. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion(s) of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VI. Effective Date.

This Ordinance and all amendments to the Solano County Code as set forth within shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of Board adoption. This Ordinance shall be published once before the expiration of fifteen (15) days after adoption, with the names of the Supervisors voting for or against the same, in a newspaper of general circulation published in Solano County, California.

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Passed and adopted by the Solano County Board of Supervisors at its regular meeting on \_\_\_\_\_ by the following vote:

AYES: Supervisors \_\_\_\_\_

\_\_\_\_\_

NOES: Supervisors \_\_\_\_\_

EXCUSED: Supervisors \_\_\_\_\_

\_\_\_\_\_

ERIN HANNIGAN, Chairwoman  
Solano County Board of Supervisors

ATTEST:  
Birgitta E. Corsello, Clerk  
Board of Supervisors

By: \_\_\_\_\_  
Jeanette Neiger, Chief Deputy Clerk



