

Summary Minutes
ALAMEDA COUNTY AIRPORT LAND USE COMMISSION
Wednesday, January 18, 2006

Meeting was called to order at 3:15PM

1. Roll Call

Commissioners present:

Janet Lockhart

Woody Pereira

Joe Chan

Brent Shiner

Max Morris

Leander Hauri

Kristi McKenney

Commissioners absent:

Steve Grossman

Beverly Johnson

Staff present:

Cindy Horvath

Alex Amoroso

Maria Elena Marquez

Consultant:

Lisa Harmon

Members of the public present:

Howard Beckman

Francois Gallo

Ana Apodaca

2. Approval of Minutes of November 17, 2005.

Mr. Pereira said that he wanted the minutes to reflect that County Council was not in attendance at the last meeting. Commissioner Shiner moved to approve the minutes as amended. Commissioner Pereira seconded.

3. Open Forum – No speakers.

4. Discussion of AB 2776, Airport Influence Areas and Real Estate Transactions.

Staff stated that she included in the packet a brief staff report with background on this item. She stated that essentially AB 2776 was enacted to expand an already existing law that has to do with real state disclosure. What this does is it changes the disclosure notices to include information for potential buyers of real estate that would notify them if they were in what is now called Airport Influence Area. This Commission has identified in our policy plan a general referral area for each of the airports. This is essentially notification that if a person was to purchase property in this area, they should be made aware potential interference such as noise and vibration from airport operations nearby.

Because of the questions that have been asked, staff invited County Counsel, Brian Washington, to address these questions. In addition, staff stated that the Livermore Airport Committee is struggling with this issue, and that they are planning on asking ALUC if they can change their existing AIA.

Brian Washington, Assistant County Counsel, indicated that staff asked him whether the airport influence area is different from the general referral area.. County counsel explained his interpretation of the various statutes that establish airport influence area, generally referred to as AIA, as being synonymous with the referral area. He stated that the Simitian bill that is included in the packet, explicitly refers to the airport influence area and the referral area as being the same thing. Caltrans handbook similarly does not say that in so many

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words, but gives that general impression. Based on that information, his initial conclusion looking at this issue is that the referral area and the AIA need to be the same.

However, with the statutory interpretation and legal questions, there is always interesting twists. An example is the San Carlos Airport in San Mateo County, which has apparently recently expanded their airport influence area that is greater than the referral area. He spoke with their County Counsel representative last week about this issue.

Basically, they interpret the statutory interpretation laid out, explicitly in the public utilities code as clear direct authority to have a referral area, and an airport influence area that are different, and they feel that legislative intent of the Simitian Bill was clear enough to increase notification and to broaden AIA. They cite the Public Utilities Code process that requires a hearing and findings that clearly gives the ALUC some discretion in terms of exercising that authority.

Based on those three pieces, they feel comfortable that they can indeed have an AIA different from the referral area. There are other entities that have recently done this, Redding and Santa Barbara. Counsel stated he would like to follow up on that also through the County Counsels Association network with other attorneys who represent the Airport Land Use Commission to see if there are other entities interpreting the statute in that matter.

Commissioner Pereira indicated that it appeared to him it would be a department of real estate enforcement responsibility. County Counsel concurred, and said they would be looking to what the ALUC establishes and then enforcing based on what this Commission established.

Commissioner Chan asked how did the San Carlos airport expand their area and what are their dimensions.

Staff said that she got the information long time ago, from her counterpart in San Mateo County. She can take a look at that and be prepared to come back next meeting for more discussion. It was not all of the airports, it was only one airport.

Commissioner Morris asked Staff for some history on those city airports that are expanding and why.

Commissioner Lockhart asked County Counsel about his interpretation, specifically, if the areas need to be the same but these three cities particularly have done something differently and they are basing it on this bill. County counsel said that is correct. He said that reading the statutes, it seems to him that they need to be the same but others have taken a different approach and he is in the process of understanding exactly the strength of their position. Commissioner Lockhart asked if they have been challenged on taking a different approach. County Counsel said that San Mateo County Counsel's office indicated that they have not been challenged.

Leander Hauri reported that the Airport Commission for the City of Livermore is interested in dealing with noise complaint issues, and that they came up with the extension of the Livermore AIA. A relatively small area was suggested by the Commission be extended.

Commissioner Chan asked Mr. Hauri if he had any projected date to present the Commission with a proposal. He stated his Commission is waiting to hear from County Counsel on the merits of this idea.

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Howard Beckman stated that there are really two questions at issue here: who must disclose and what is the airport influence area. Mr. Beckman voiced concerns regarding a political agenda as motivating the issue of disclosure. The law is clear. The AB2776 is very clear in its language as to who must disclose.

Mr. Wiswell, who is head of the aeronautics program in Sacramento, sent out to every County a letter saying that according to the new law, any person who intends to offer land for sale within an airport influence area, is required to disclose the fact. That is the wish of certain Pilot Associations, that is the wish of some segments of the airport community, certainly not all. That is simply wrong. The law is clear that it is not everyone. Who must disclose is important because of the information that comes from various government bodies including this Commission. The second question is very complex: what is the airport influence area. Again, the law is very clear that it is what has been called the general referral area. He encouraged the Commission to review a copy of the Airport Land Use Planning Handbook that was prepared by the Aeronautics program in Sacramento. Section 3 discusses how one goes about making out the various compatibility boundaries.

Caltrans has defined four areas, two of which are common sense and obvious: noise, which was the reason that the ALUC was set up; airport safety; and then airspace protection and over flight. Those are the four factors that have to be considered in making up goes into compatibility with surrounding land uses. The planning referral area, the airport influence area is not the sum of those, it is the widest or most extensive area that must be the safety boundary. He urged commissioners to look Chapter 3 on how these boundaries are made up. There is nothing in AB2776, there is nothing in the Airport Land Use Plan Handbook that would allow this Commission or any County Commission to draw a boundary around communities that are complaining about noise.

Francois Gallo, stated that in regard to the AIA, he has not heard a good discussion as to why that area was increased recently. He sees no connection between that and the airport boundaries referred for noise, and for safety but at the same time they have been told consistently at least in regards to the Oakland airport that the noise boundaries have decreased. He would like to see an explanation or justification for why the boundaries are increasing. He is concerned because there is a lot of confusion on this issue. He referred to the August minutes from the Caltrans Technical Advisory Agency. He read one bullet from those minutes: "we organize the discussion on land use to highlight the positive rather than focus on the negative". He thinks that is a dangerous road to go down. This discussion needs to be looked at from other policies that have been adopted, such as smart growth, and how is going to affect us. Specifically:

- Housing needs/requirements and AIA boundary impacts
- Noise metrics do not reflect public sentiment

Staff said that she wanted to bring back information on the other airports that have looked at this issue. In addition, County Counsel will provide a report that she can include in the packet next month, that summarizes this as well from his perspective and continue the general discussion then. Mr. Chan asked if it will contain the details of how the expansion had taken place.

5. Continuation of workshop on Portions of the Administrative Draft Airport Land Use Policy Plan Update.

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Staff indicated that item No. 5 is a continuation of last month's meeting in terms of continuation the remainder of the Airport Land Use Policy Plan review. There is one more chapter to review. David Full, ESA consultant, was unable to attend this meeting but sent his colleague, Lisa Harmon. The first chapter is reflective of the legislation that establishes ALUC. Essentially is a short chapter, it gives us background for what ALUC is established to do, the make up of the Commission.

Commissioner Pereira indicated he recalls raising a question on Chapter 1, second line, where it says the land use policy plan is to promote, and the question was if it was a proper term to address as opposed to promote.

Lisa Harmon asked if anyone had questions or suggestions for additional citations regarding this chapter. Commissioner Pereira pointed out a question for clarification on page 2 "policy should be developed to handle this problem", he thinks this should be addressed, resolved or examined.

Commissioner Chan indicated that there is a typo in the same section. Ms. Harmon indicated that the next session is largely history and asked if there were questions regarding the history of the land use Commission.

Commissioner Pereira asked if it will be appropriate as a chapter or some other heading to address the policy standards for heliports which seems to be missing from those chapters. Staff said that reference can be included.

Commissioner Chan said that the intent of having separate chapters for the airports was because each has separate master plans. Commissioner Pereira said chapter 2 is general for the County that we also have problems with heliports in the County and we do not know where they are. Staff said that in the existing plan, there are five or six pages of policies regarding heliports.

Commissioner Chan indicated that it seemed that the Commission reviewed all the applicable chapters with the possible exception of an additional chapter on heliports. He asked Ms. Harmon when the Commission can expect to see the final draft with the changes incorporated. Ms. Harmon said she thinks it can be done relatively quickly.

Howard Beckman said he wanted to refer to the written comments that he submitted in October, 2005 and wanted to stress a couple of things. He has a couple of related items in his written comments that had to do with the role of the Commission. On page 1-3 on the top paragraph, and again on page 1-5, it says that these Commissions throughout the state coordinate planning at the state, regional and local levels and wants to know where that comes from.

In addition, Mr. Beckman had the following comments regarding RAPC, and the ALUC compatibility plan process:

- Regional Airport Planning Commission (RAPC) role in creating an aviation system plan; enlarging it's role.
- Consistency with airport goals.
- That it is not true that the ALUC is required to use the Caltrans handbook in developing compatibility plans for airports

6. **Projects reviewed by staff.** No projects were reviewed this month.
7. **ALUC Commissioner Forum –**

Commissioner Morris stated that he and staff had a discussion a couple of times about the implementation of this document with various counties and planners. He is concerned that it is overwhelming, and discussed developing some type of letter or flow chart that guides them into the important parts of this document so that it is a useful tool instead of a four pound book on their desks.

Commissioner Chan asked Staff if this is something that she can work on for the Commission. Staff said that in one of the prior ALUC meetings, Commissioner Grossman talked about when this plan is finalized and ready to go out to the various jurisdictions that we send with it a cover letter outlining what is most important for the cities to pay attention to when they are doing project review. Staff stated that we could also take a look at the possibility of out of that letter creating some type of shortened version of it to put with the plan itself. She said she would have to think about it and get back to the Commission.

Commissioner Pereira indicated that back in the minutes from November 2005, Mr. Beckman's letter dated October 15 had been referred to County Counsel and said that he did not get a response. He said that his request is that when a letter is written and submitted, that they be responded to. Staff responded that she did not get a response yet from County Counsel. In addition, the consultant is also preparing some responses. Once responses are received, staff will prepare a letter for the Commission.

Commissioner Pereira said that in the future, a written response to a letter like this should be received by the commissioners 15 days before the meeting.

Discussion ensued regarding details of responding to such letters in the future.

Commissioner Chan said that at times, the issues that are raised are completely beyond the scope of the ALUC. Perhaps it is appropriate for County Counsel to answer to some of these questions as something that ALUC needs to take action on, but Mr. Beckman does keep raising issues and they do need to be responded to.

Commissioner Morris said that Commissioner Pereira's point is well taken. We have a letter on the table and if it is outside of the realm of the Commission, we deserve an answer from County Counsel to the best of their ability. We are in the middle here. He would like to have the letter before the meeting.

Commissioner Pereira asked staff about the progress on the heliport inventory. Staff reported that unfortunately the heliport inquiry has taken a back seat to this project and other pressing projects including the General Plan update. Her intention is to get a letter out to the various agencies, as was discussed earlier, to get a listing of what is out there now and what is planned. Staff suggested this listing could be included in Chapter 2, if we do not have a separate chapter on heliports, we could list those out if the Commission so desired. She reminded the Commission that it is not going to be a complete listing because of instances where we discovered heliports that we did not know existed within the County, that were private. We can have a private listing, those that we know which are probably far less than what is out there, and a public listing. Commissioner Pereira said he is not thinking of including it in the Plan. He suggested sending a

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letter to every police chief, sheriff, every city in the County, and planning directors and ask them if they are aware of heliports and where are they.

Commissioner Shiner referred to Commissioner Pereira's comments regarding Mr. Beckman's letter, and that with most of the questions that Mr. Beckman raised, he does not believe staff has the expertise to answer the questions. He suggested they might be addressed by the Plan consultant, and asked staff if the budget allowed the Commission to use the time of ESA to prepare responses to Mr. Beckman's letter. Staff said it is not within the budget, but that Mr. Full had offered to look through the letter and provide guidance to her with any issues that he could. Commissioner Shiner said he did not think so and in trying to get an answer for Mr. Beckman, he asked how the Commission is going to approach that without going to somebody with the expertise. Commissioner Pereira said it was his intent to get this letter to Mr. Beckman, he said the Commission needs County Counsel support to do that.

Commissioner Chan said that he thinks that is not going to be the correct procedure to respond to Mr. Beckman questions. He stated that his concern is that Mr. Beckman's questions were not addressed, so we either have to address all of them because we can not choose which questions we are going to answer. Commissioner Pereira disagreed. He said that what he is talking about is staff guidance from the County Counsel office.

Commissioner Shiner asked if that would be an adequate reply to a member of the public to do that. He can read from Mr. Beckman's letter that he is looking for more detail. Commissioner Pereira said that he does not care what Mr. Beckman is looking for, he is concerned by the questions he has raised. He wants the Commission to respond to them, especially if there are liability issues being raised. Commissioner Shiner said that he does not know if County Counsel is going to give the Commission the answers, that they have to come from ESA. Commissioner Pereira disagreed.

Alex Amoroso, Assistant Deputy Director for Policy Planning, introduced himself, and stated that staff will approach County Counsel once again with the letter and ask them for their support for specific questions, and understands that there are some areas that Mr. Beckman brought up that are specific to your activities as ALUC members. He will ask for specific guidance on those portions and sort through the issues, identify those things that we can talk with ESA about and see if there is budget or we need to find additional budget. He will ask County Counsel to give responses from their end, but that unfortunately their time is full. He recognized that the Commission wants response and he will get it from County Counsel as quickly as possible. We will sort the letter and refer directly to the specific issues that are pointed to the ALUC actions and refer them to County Counsel and ask specifically for responses on those and sort the other questions out as appropriate.

8. Adjournment

The meeting was adjourned at 4:09 p.m.