

Appendix E

Sample Implementation Documents



APPENDIX E

Sample Implementation Documents

The responsibility for implementation of the policies set forth in the compatibility plans adopted by airport land use commissions rests largely with the affected local jurisdictions. Implementation tools fall into the categories of notification and regulation. The state requires certain notification requirements effective January 1, 2004 (as a result of Assembly Bill 2776). Additional notification, in the form of a recorded deed notice, may also be appropriate. Regulation may take the form of individual property restrictions (avigation easements) or additional development controls in areas within the vicinity of an airport (an airport combining zone ordinance).

Required Notification—State law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire. The notice shall include, for property within an AIA to include the following notice:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

Recorded Deed Notice—Deed notices are a form of buyer awareness measure whose objective is to ensure that prospective buyers of airport area property, particularly residential property, are informed about the airport's impact on the property. Unlike easements, deed notices do not convey property rights from the property owner to the airport and do not restrict the height of objects. They only document the existence of certain conditions which affect the property—such as the proximity of the airport and common occurrence of aircraft overflights at or below the airport traffic pattern altitude. ALUCs may make recording of deed notices a requirement for project approval within portions of the airport influence area where avigation easements are not essential. Included in this Appendix is sample of a deed notice (from the California Airport Land Use Planning Handbook, 2002).

Avigation Easement—Avigation easements transfer certain property rights from the owner of the underlying property to the owner of an airport. ALUCs may require avigation easement dedication as a condition for approval of development on property subject to high noise levels or a need to restrict heights of structures and trees to less than what might ordinarily occur on the property. Also, airports may require avigation easements in conjunction with programs for noise insulation of existing structures in the airport vicinity. Included in this Appendix is a sample avigation easement (from the California Airport Land Use Planning Handbook, 2002).

Airport Combining Zone Ordinance—An additional type of implementation document available to local jurisdictions is an airport combining zone ordinance. Possible components for such an ordinance are described in Table E-1.

**TABLE E-1
POSSIBLE AIRPORT COMBINING ZONE COMPONENTS**

An airport compatibility combining zoning ordinance might include some or all of the following components:

- **Airspace Protection**—A combining district can establish restrictions on the height of buildings, antennas, trees, and other objects as necessary to protect the airspace needed for operation of the airport. These restrictions should be based upon the current version of Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, Subpart C. Additions or adjustment to take into account instrument approach (TERPS) surfaces should be made as necessary. Provisions prohibiting smoke, glare, bird attractions, and other hazards to flight should also be included.
- **FAA Notification Requirements**—Combining districts also can be used to ensure that project developers are informed about the need for compliance with the notification requirements of FAR Part 77. Subpart B of the regulations requires that the proponent of any project which exceeds a specified set of height criteria submit a Notice of Proposed Construction or Alteration (Form 7460-1) to the Federal Aviation Administration prior to commencement of construction. The height criteria associated with this notification requirement are lower than those spelled out in Part 77, Subpart C, which define airspace obstructions. The purpose of the notification is to determine if the proposed construction would constitute a potential hazard or obstruction to flight. Notification is not required for proposed structures that would be shielded by existing structures or by natural terrain of equal or greater height, where it is obvious that the proposal would not adversely affect air safety.
- **Maximum Densities/Intensities**—Airport noise and safety compatibility criteria are frequently expressed in terms of dwelling units per acre for residential uses and people per acre for other land uses. These standards can either be directly included in a combining zone or used to modify the underlying land use designations. For residential land uses, the correlation between the compatibility criteria and land use designations is direct. For other land uses, the method of calculating the intensity limitations needs to be defined. Alternatively, a matrix can be established indicating whether each specific type of land use is compatible with each compatibility zone. To be useful, the land use categories need to be more detailed than typically provided by general plan or zoning ordinance land use designations.
- **Open Areas for Emergency Landing of Aircraft**—In most circumstances in which an accident involving a small aircraft occurs near an airport, the aircraft is under control as it descends. When forced to make an off-airport emergency landing, pilots will usually attempt to do so in the most open area readily available. To enhance safety both for people on the ground and the occupants of aircraft, airport compatibility plans often contain criteria requiring a certain amount of open land near airports. These criteria are most effectively carried out by planning at the general or specific plan level, but may also need to be included in a combining district so that they will be applied to development of large parcels. Adequate open areas can often be provided by clustering of development on adjacent land.

TABLE E-1
POSSIBLE AIRPORT COMBINING ZONE COMPONENTS

An airport compatibility combining zoning ordinance might include some or all of the following components:

- **State Regulation of Obstructions**—State law prohibits anyone from constructing or altering a structure or permitting an object of natural growth to exceed the heights established by FAR Part 77, Subpart C, unless the FAA has determined the object would not or does not constitute a hazard to air navigation (Public Utilities Code, Section 21659). Additionally, a permit from the Department of Transportation is required for any structure taller than 500 feet above the ground unless the height is reviewed and approved by the Federal Communications Commission or the FAA (Section 21656).
- **Designation of High Noise-Impact Areas**—California state statutes require that multi-family residential structures in high-noise exposure areas be constructed so as to limit the interior noise to a Community Noise Equivalent Level of no more than 45 dB. A combining district could be used to indicate the locations where special construction techniques may be necessary in order to ensure compliance with this requirement. The combining district also could extend this criterion to single-family dwellings.
- **Areas of Special Compatibility Concern**—A significant drawback of standard general plan and zoning ordinance land use designations is that they can be changed. Uses that are currently compatible are not assured of staying that way in the future. Designation of areas of special compatibility concern would serve as a reminder that airport impacts should be carefully considered in any decision to change the existing land use designation. [A legal consideration which supports the value of this concept is that down-zoning of a property to a less intensive use is becoming more difficult. It is much better not to have inappropriately up-zoned the property in the first place.]
- **Real Estate Disclosure Policies**—The geographic extent and specific language of recommended real estate disclosure statements can be described in an airport combining zone ordinance.

Sample Avigation Easement

This indenture made this ____ day of _____, 20__, between _____ herein after referred to as Grantor, and the [Insert County or City name], a political subdivision in the State of California, hereinafter referred to as Grantee. The Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to the Grantee, its successors and assigns, a perpetual and assignable easement over the following described parcel of land in which the Grantor holds a fee simple estate. The property which is subject to this easement is depicted as _____ on “Exhibit A” attached and is more particularly described as follows:

[Insert legal description of real property] The easement applies to the Airspace above an imaginary plane over the real property. The plane is described as follows:

The imaginary plane above the hereinbefore described real property, as such plane is defined by Part 77 of the Federal Aviation Regulations, and consists of a plane [describe approach, transition, or horizontal surface]; the elevation of said plane being based upon the _____ Airport official runway end elevation of _____ feet Above Mean Sea Level (AMSL), as determined by [Insert name and Date of Survey or Airport Layout Plan that determines the elevation] the approximate dimensions of which said plane are described and shown on Exhibit A attached hereto and incorporated herein by reference.

The aforesaid easement and right-of-way includes, but is not limited to:

- 1) For the use and benefit of the public, the easement and continuing right to fly, or cause or permit the flight by any and all persons, or any aircraft, of any and all kinds now or hereafter known, in, through, across, or about any portion of the Airspace hereinabove described; and
- 2) The easement and right to cause or create, or permit or allow to be caused or created within all space above the existing surface of the hereinabove described real property and any and all Airspace laterally adjacent to said real property, such noise, vibration, currents and other effects of air, illumination, and fuel consumption as may be inherent in, or may arise or occur from or during the operation of aircraft of any and all kinds, now or hereafter known or used, for navigation of or flight in air; and
- 3) A continuing right to clear and keep clear from the Airspace any portions of buildings, structures, or improvements of any kinds, and of trees or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees, or other things which extend into or above said Airspace, and the right to cut to the ground level and remove, any trees which extend into or above the Airspace; and
- 4) The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects, which extend into or above the Airspace; and
- 5) The right of ingress to, passage within, and egress from the hereinabove described real property, for the purposes described in subparagraphs (3) and (4) above at reasonable times and after reasonable notice.

For and on behalf of itself, its successors and assigns, the Grantor hereby covenants with the [Insert County or City name], for the direct benefit of the real property constituting the _____ Airport hereinafter described, that neither the Grantor, nor its successors in interest or assigns will construct, install, erect, place or grow in or upon the hereinabove described real property, nor will they permit to allow, any building structure, improvement, tree or other object which extends into or above the Airspace, or which constitutes an obstruction to air navigation, or which obstructs or interferes with the use of the easement and rights-of-way herein granted.

The easements and rights-of-way herein granted shall be deemed both appurtenant to and for the direct benefit of that real property which constitutes the _____ Airport, in the [Insert County or City name], State of California; and shall further be deemed in gross, being conveyed to the Grantee for the benefit of the Grantee and any and all members of the general public who may use said easement or right-of-way, in landing at, taking off from or operating such aircraft in or about the _____ Airport, or in otherwise flying through said Airspace.

Grantor, together with its successors in interest and assigns, hereby waives its right to legal action against Grantee, its successors, or assigns for monetary damages or other redress due to impacts, as described in Paragraph (2) of the granted rights of easement, associated with aircraft operations in

the air or on the ground at the airport, including future increases in the volume or changes in location of said operations. Furthermore, Grantor, its successors, and assigns shall have no duty to avoid or mitigate such damages through physical modification of airport facilities or establishment or modification of aircraft operational procedures or restrictions. However, this waiver shall not apply if the airport role or character of its usage (as identified in an adopted airport master plan, for example) changes in a fundamental manner which could not reasonably have been anticipated at the time of the granting of this easement and which results in a substantial increase in the impacts associated with aircraft operations. Also, this grant of easement shall not operate to deprive the Grantor, its successors or assigns, of any rights which may from time to time have against any air carrier or private operator for negligent or unlawful operation of aircraft.

These covenants and agreements run with the land and are binding upon the heirs, administrators, executors, successors and assigns of the Grantor, and, for the purpose of this instrument, the real property firstly hereinabove described is the servient tenement and said _____ Airport is the dominant tenement.

DATED: _____
STATE OF: _____
COUNTY OF: _____

On _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, and _____ known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Notary Public

Sample Deed Notice

A statement similar to the following should be included on the deed for any real property subject to the deed notice requirements set forth in the [Insert ALUC name] *Airport Land Use Compatibility Plan*. Such notice should be recorded by the county of [Insert County name]. Also, this deed notice should be included on any parcel map, tentative map, or final map for subdivision approval.

The *Alameda County Airport Land Use Compatibility Plan* and [Insert County/City name] Ordinance (Ordinance No. _____) identify a [Insert Airport name] Airport Influence Area. Properties within this area are routinely subject to overflights by aircraft using this public-use airport and, as a result, residents may experience inconvenience, annoyance, or discomfort arising from the noise of such operations. State law (Public Utilities Code Section 21670 et seq.)

establishes the importance of public-use airports to protection of the public interest of the people of the state of California. Residents of property near such airports should therefore be prepared to accept the inconvenience, annoyance, or discomfort from normal aircraft operations. Residents also should be aware that the current volume of aircraft activity may increase in the future in response to Alameda County population and economic growth. Any subsequent deed conveying this parcel or subdivisions thereof shall contain a statement in substantially this form.