



Mead & Hunt, Inc.

MEMORANDUM

Date: January 26, 2009

To: Beale AFB ALUCP Technical Advisory Committee

From: Ken Brody, Beale ALUCP Project Manager
Mead & Hunt, Inc.

Subject: *ALUC Project Review Procedures*

From discussions early in the Beale Air Force Base Airport Land Use Compatibility Plan (ALUCP) project, as well as in scoping for the Yuba County ALUCP project, a need for common understanding regarding the land use project review involvement of SACOG as the airport land use commission (ALUC) for Yuba County has become apparent. This memo addresses the review requirements under state law, as well as the procedures anticipated to be put in place in the upcoming ALUCPs.

Statutory Requirements

The role of ALUCs with regard to review of local agency actions involving land uses within an airport influence area can be characterized as one of oversight. State law gives ALUCs important powers and duties to review local plans and projects to help ensure compatibility with airports; however, the responsibility for final decisions on these matters rests with the local agencies.

Section 21675(a) of the Public Utilities Code provides that “Each commission shall formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.” Sections 21676 and 21676.5 then define what types of actions local agencies must submit to the ALUC for determination of consistency with the ALUC’s plan. The review requirements vary depending upon the type of action involved and other circumstances.

General Plan Consistency and Overruling of ALUC Actions

A clear emphasis in the law is on the relationship between local agencies’ general plans and specific plans and ALUCs’ compatibility plans. Fundamentally, ALUCs serve to establish the criteria for assessing compatibility between land uses and nearby airports. Local agencies are responsible for implementation of these criteria via their general plans, specific plans, and related policies. Government Code Section 65302.3 gives local agencies two options. Paragraph (a) says that “The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.” The *California Airport Land Use Planning Handbook* (the “Handbook”) published by the California Division of Aeronautics provides guidance regarding how to make general plans, specific plans, and related policy documents consistent with an ALUCP. In

particular, Chapter 5 of the Handbook (*Responsibilities of Local Agencies*) contains valuable guidance on making local plans consistent with ALUC plans.¹

To be consistent with an ALUCP, a general plan does not need to be identical to it. However, to pass the consistency test, a general plan must do two things:

- ▶ It must specifically address compatibility planning issues, either directly or through reference to a zoning ordinance or other policy document; and
- ▶ It must avoid direct conflicts with compatibility planning criteria.

Local agencies' only other option is one allowed under Paragraph (c): "If the legislative body does not concur with any of the provisions of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code." This sets in place a procedure for a local agency to overrule an ALUC determination that the local agency's general plan is not consistent with the ALUCP. The requirements under Section 21676 for adoption of findings to overrule the ALUC are quite explicit:

- ▶ First, the findings must spell out how, the ALUC notwithstanding, "the proposed action is consistent with the purposes of this article stated in Section 21670." That is, the findings must show that the action will "protect public health, safety, and welfare by ensuring the orderly expansion of airports and ... [minimizing] the public's exposure to excessive noise and safety hazards ..." Economic necessity or other rationale for proceeding with a project do not, by themselves, constitute adequate findings for overruling the ALUC.
- ▶ Second, the local agency must give both the ALUC and the California Division of Aeronautics at least 45 days' notice of its intent to overrule the ALUC so that the ALUC and the Division have an opportunity to comment. Responses received from the ALUC or Division must be made part of the final record of the local agency's decision.
- ▶ Third, the local agency must hold a public hearing on the intended overruling.
- ▶ Finally, the action to overrule the ALUC must be made by a two-thirds vote of the local agency's governing body.

A decision to overrule an ALUC also has another significant implication. Public Utilities Code Section 21678 provides that "With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676 or 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation."

ALUC Review of Land Use Actions

The status of general plan consistency is the chief determinant of what types of land use actions are subject to ALUC review in accordance with state law. Once the local agency has made its general plan and applicable specific plans, and any other policy documents that may be referenced therein, consistent with the ALUCP, the burden for ensuring that individual development

¹ The Public Utilities Code states that it is the intent of the Legislature that both ALUC's and local agencies be guided by information in the Handbook. (Public Utilities Code Section 21674.7.)

projects comply with the compatibility criteria largely shifts to that agency. Actions that might affect the consistency status of those plans would continue to require ALUC review. Thus, ALUC review of general plans, etc., is required any time a change to those plans is proposed. Section 21676(b) of the Public Utilities Code mandates that "Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission." Other types of land use actions are not subject to ALUC review under these circumstances unless, as allowed under Section 21676.5(b), "the commission and the local agency agree that individual projects shall be reviewed by the commission."

If the ALUC determines that a local agency has not made its general plan and applicable specific plans consistent with the ALUCP or, alternatively, overruled the ALUC, Public Utilities Code Section 21676.5(a) allows the ALUC to "require that the local agency submit all subsequent actions, regulations, and permits to the commission for review ..." As discussed below in the section on suggested ALUC policies, ALUCs often reduce the "all ... actions" requirement to just the mandatory review actions plus others having the greatest potential compatibility implications. Even so, reducing the range of actions subject to formal ALUC review is an incentive for local agencies to make their general plans consistent with the ALUCP.

Suggested ALUC Policies

Work on drafting policies for the Beale Air Force Base ALUCP is just beginning and the Yuba County ALUCP project has not yet started. The review policies outlined here are therefore based on procedures adopted by other ALUCs and on ones under consideration by SACOG in the draft ALUCP recently prepared for McClellan Airfield. The latter are anticipated to become the basis for similar procedural policies for the Beale and Yuba County ALUCPs.

Actions to be Submitted for ALUC Review

In accordance with the statutory framework discussed above, the Beale ALUCP will require that the following types of actions be submitted for ALUC review regardless of the general plan consistency status:

- ▶ The adoption or approval of any new general or specific plan or any amendment thereto that affects lands within the airport influence area.
- ▶ The adoption or approval of a zoning ordinance or building regulation, including any proposed change or variance to any such ordinance or regulation, that affects land within the airport influence area.

ALUC policies regarding review of other types of land use actions are expected to parallel the provisions in state law. Submittal of these actions will be required until the local agencies' general plans and applicable specific plans have been made consistent with the ALUCP. However, the range of these actions will be reduced to a list of major land use actions having potential compatibility implications. A specific list of major land use actions will need to be defined, but could include such things as: pre-zoning associated with annexation; infrastructure improvements leading to development in undeveloped areas; subdivisions having more than 4 lots; buildings larger than 20,000 square feet; and objects tall enough to require FAA review. Simple building permits and

other actions that typically are handled on a ministerial basis will not need to be submitted for review. Even subdivisions of up to four parcels and small nonresidential buildings will tentatively not require ALUC review. These provisions should greatly reduce the number of projects that will need to be submitted to the ALUC.

ALUCP policies may request that these major land use actions continue to be sent to the ALUC even after the local agency's general plan and any affected specific plans have been made consistent with the ALUCP. However, the submittal would be optional and the review informal. In effect, the ALUC would be requesting to be notified of major land use actions in the same manner that other potentially affected agencies receive notice and to have a similar opportunity to comment.

ALUC Review Process

The manner in which the ALUC will conduct reviews of general plans and other actions under the forthcoming Beale AFB and Yuba County ALUCPs has not been fully defined. At present, SACOG staff handles nearly all project reviews. This is true not just for projects near Beale AFB and Yuba County Airport, but also for those near other airports in the ALUC's jurisdiction. The SACOG Board of Directors serves as the ALUC for four counties: Yuba, Sutter, Sacramento, and Yolo.

The review process likely to be included in the Beale AFB and Yuba County ALUCPs will require that the SACOG Board hear and make the consistency determination on land use actions for which submittal to the ALUC is mandatory under all circumstances—general plans, specific plans, zoning ordinances, and building regulations as indicated above. All reviews of major land use actions—actions of the type as described above—will be completed by SACOG staff, including prior to when the local agency's general plan has been deemed consistent with the ALUCP. These reviews would be carried forward to the SACOG Board only if the staff's determination is challenged by the local agency or other affected party.

Consistent with the ALUC statutory framework, the ALUCP policies will state that consistency determinations on general plans, specific plans, zoning ordinances, and building regulations must be completed within 60 days of when a complete package is submitted for ALUC review. As also established by state law, the ALUC's failure to make a determination within this time period will result in the action being deemed consistent with the ALUCP unless the local agency agrees to a time extension. The same time limit for reviews is expected to be set for reviews of major land use actions.