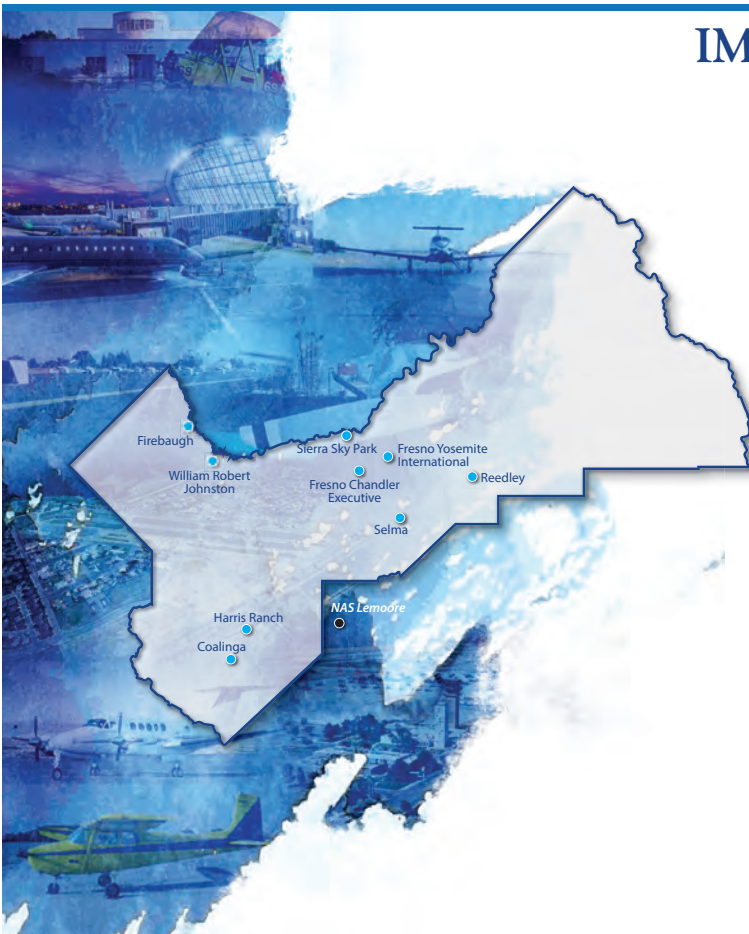




Fresno Council
of Governments

Appendix L

IMPLEMENTATION MATERIALS



Appendix L: Implementation Materials

This appendix includes the following materials to aid implementation of the *Airport Land Use Compatibility Plan*:

- Application for Major Land Use Action Review
- Sample aviation easement
- Sample Deed Notice
- Guidance for Calculating Land Use Intensity
- General Plan Consistency Checklist

Additional information regarding this topic can be found on the Caltrans Division of Aeronautics website:
<http://www.dot.ca.gov/aeronaut/index.html>

Application for Major Land Use Action Review

Sample Avigation Easement

This indenture made this ____ day of _____, 20____, between _____ hereinafter 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 hereinafter 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 _____ }

ss

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

Source: *California Airport Land Use Planning Handbook* (October 2011)

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 **[Fresno County]** *Airport Land Use Compatibility Plan*. Such notice should be recorded by the county of **[Fresno]**. Also, this deed notice should be included on any parcel map, tentative map, or final map for subdivision approval.

The **[Fresno 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 **[Fresno]** County population and economic growth. Any subsequent deed conveying this parcel or subdivisions thereof shall contain a statement in substantially this form.

Source: *California Airport Land Use Planning Handbook* (October 2011)

Guidance for Calculating Land Use Intensity

Following is guidance on how to calculate the intensity of land uses (the number of people-per-acre). The most difficult part about determining the intensity of a land use is estimating the number of people likely to use a particular facility. There are several methods which can be utilized, depending upon the nature of the proposed use:

- **Maximum Occupancy-** The California Building Code (CBC) can be used as a standard for determining the maximum occupancy of certain uses. The chart provided as **Table L1** indicates the required number of square feet per occupant. The number of people on the site can be calculated by dividing the total floor area of a proposed use by the minimum square feet per occupant requirement listed in the table. The maximum occupancy can then be divided by the size of the parcel in acres to determine the number of people-per-acre. Surveys of actual occupancy levels conducted by various agencies have indicated that many retail and office uses are generally occupied at no more than 50 percent of their maximum occupancy levels, even at the busiest times of day. Therefore, the number of people calculated for office and retail uses should usually be adjusted (50%) to reflect the actual occupancy levels before making the final people-per-acre determination. Even with this adjustment, the CBC-based methodology typically produces intensities at the high end of the likely range.
- **Parking Ordinance-** The number of people present in a given area can be calculated based upon the number of parking spaces provided. Traffic studies can be used to develop an assumption regarding the number of people per vehicle. The number of people-per-acre can then be calculated by dividing the number of people on-site by the size of the parcel in acres. This approach is appropriate where the use is expected to be dependent upon access by vehicles. Depending upon the specific assumptions utilized, this methodology typically results in a number in the low end of the likely intensity for a given land use.
- **Survey of Similar Uses-** Certain uses may require an estimate based upon a survey of similar uses. This approach is more difficult, but is appropriate for uses which, because of the nature of the use, cannot be reasonably estimated based upon parking or square footage.

TABLE L1
Maximum Floor Area Allowances Per Occupant

Function of Space	Floor Area In Sq. Ft. Per Occupant
Accessory storage areas, mechanical equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Assembly with fixed seats	See Section 1004.7
Assembly without fixed seats	
Concentrated (chairs only – not fixed)	7 net
Standing space	5 net
Unconcentrated (tables and chairs)	15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas	7 net
Business areas	100 gross
Courtrooms – other than fixed seating areas	40 net
Daycare	35 net
Dormitories	50 gross
Educational	
Classroom area	20 net
Shops and other vocational room areas	50 net
Exercise rooms	50 gross
H-5 Fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Kitchens, commercial	200 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Locker rooms	50 gross
Mercantile	
Areas on other floors	60 gross
Basement and grade floor areas	30 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Skating rinks, swimming pools	
Rink and pool	50 gross
Decks	15 gross
Stages and platforms	15 net
Warehouses	500 gross
For SI: 1 square foot = 0.0929 m ² .	

Example:

Proposed Development: Single-floor furniture store containing 20,000 sq. ft.

A. Calculation Based on Parking Space Requirements

Assume that local codes require 1 parking space per 1,500 square feet of use area for a furniture store. Next, assume 1.5 people per automobile for this type of use.

The usage intensity would be:

- 1) $20,000 \text{ sq. ft. bldg.} / 1,500 \text{ sq. ft. (1.0 parking space per 1,500 sq. ft.)} = 13 \text{ required parking spaces.}$
- 2) $13 \text{ parking spaces} \times 1.5 \text{ people per space} = 20 \text{ people maximum on-site.}$
- 3) $20,000 \text{ sq. ft. bldg. footprint} / 43,560 \text{ sq. ft. per acre} = 0.46 \text{ acre bldg. footprint.}$
- 4) Assuming a relatively balanced occupancy throughout the building and that outdoor uses are minimal, the usage intensity for a single acre would be estimated to be:

Building footprint < 1.0 acre; therefore, maximum people in 1 acre = bldg. occupancy = 20 people per single acre.

B. Calculation Based on California Building Code

For the purposes of the CBC-based methodology, the furniture store is assumed to consist of 50 percent retail sales floor (at 30 square feet per occupant) and 50 percent warehouse (at 500 square feet per occupant). Usage intensities would, therefore, be estimated as follows:

- 1) $10,000 \text{ sq. ft. retail floor area} / 30 \text{ sq. ft. per occupant} = 333 \text{ people maximum occupancy in retail area}$
- 2) $10,000 \text{ sq. ft. warehouse floor area} / 500 \text{ sq. ft. per occupant} = 20 \text{ people maximum occupancy in warehouse area}$
- 3) Maximum occupancy under CBC assumptions = $333 + 20 = 353 \text{ people}$
- 4) Assuming typical peak occupancy is 50 percent of CBC numbers = $177 \text{ people maximum expected at any one time}$

The two methods produce very different results. The occupancy area estimate of 30 square feet per person is undoubtedly high for a furniture store even after the 50 percent adjustment. On the other hand, the 20 people-per-acre estimate using the parking requirement methodology appears low, but it is probably closer to being realistic.

GENERAL PLAN CONSISTENCY CHECKLIST

This checklist is intended to assist local agencies with modifications necessary to make their local plans and other local policies consistent with the ALUCP. It is also designed to facilitate Airport Land Use Commission reviews of these local plans and policies.

General Plan Document

The following items typically appear directly in a general plan document. Amendment of the general plan will be required if there are any conflicts with the ALUCP

General Plan Item	Reference
<i>Land Use Map</i> —No direct conflicts should exist between proposed new land uses indicated on a general plan land use map and the ALUC land use compatibility criteria.	
Residential densities (dwelling units per acre) should not exceed the set limits.	
Proposed nonresidential development needs to be assessed with respect to applicable intensity limits.	
No new land uses of a type listed as specifically prohibited should be shown within affected areas.	
<i>Noise Element</i> —General plan noise elements typically include criteria indicating the maximum noise exposure for which residential development is normally acceptable. This limit must be made consistent with the equivalent ALUCP criteria. Note, however, that a general plan may establish a different limit with respect to aviation-related noise than for noise from other sources (this may be appropriate in that aviation-related noise is sometimes judged to be more objectionable than other types of equally loud noises).	

Zoning or Other Policy Documents

The following items need to be reflected either in the general plan or in a separate policy document such as a combining zone ordinance. If a separate policy document is adopted, modification of the general plan to achieve consistency with the ALUCP may not be required. Modifications would normally be needed only to eliminate any conflicting language which may be present and to make reference to the separate policy document.

Policy Item	Reference
<p><i>Intensity Limitations on Nonresidential Uses</i>—ALUCPs may establish limits on the usage intensities of commercial, industrial, and other nonresidential land uses. This can be done by duplication of the performance-oriented criteria—specifically, the number of people per acre—indicated in the ALUCP. Alternatively, ALUCs may create a detailed list of land uses which are allowable and/or not allowable within each compatibility zone. For certain land uses, such a list may need to include limits on building sizes, floor area ratios, habitable floors, and/or other design parameters which are equivalent to the usage intensity criteria.</p>	
<p><i>Identification of Prohibited Uses</i>—ALUCPs may prohibit schools, day care centers, assisted living centers, hospitals, and other uses within a majority of an airport’s influence area. The facilities often are permitted or conditionally permitted uses within many commercial or industrial land use designations.</p>	
<p><i>Open Land Requirements</i>—ALUCP requirements, if any, for assuring that a minimum amount of open land is preserved in the airport vicinity must be reflected in local policies. Normally, the locations which are intended to be maintained as open land would be identified on a map with the total acreage within each compatibility zone indicated. If some of the area included as open land is private property, then policies must be established which assure that the open land will continue to exist as the property develops. Policies specifying the required characteristics of eligible open land should also be established.</p>	
<p><i>Infill Development</i>—If an ALUCP contains infill policies and a jurisdiction wishes to take advantage of them, the lands that meet the qualifications must be shown on a map.</p>	

Policy Item (Continued)	Reference
<i>Height Limitations and Other Hazards to Flight</i> —To protect the airport airspace, limitations must be set on the height of structures and other objects near airports. These limitations are to be based upon FAR Part 77. Restrictions also must be established on other land use characteristics which can cause hazards to flight (specifically, visual or electronic interference with navigation and uses which attract birds). Note that many jurisdictions have already adopted an airport-related hazard and height limit zoning ordinance which, if up to date, will satisfy this consistency requirement.	
<i>Buyer Awareness Measures</i> —Besides disclosure rules already required by state law, as a condition for approval of development within certain compatibility zones, some ALUCPs require either dedication of an aviation easement to the airport proprietor or placement on deeds of a notice regarding airport impacts. If so, local agency policies must contain similar requirements.	
<i>Nonconforming Uses and Reconstruction</i> —Local agency policies regarding nonconforming uses and reconstruction must be equivalent to or more restrictive than those in the ALUCP, if any.	

REVIEW PROCEDURES

In addition to incorporation of ALUCP compatibility criteria, local agency implementing documents must specify the manner in which development proposals will be reviewed for consistency with the compatibility criteria as outlined below.

Actions Always Required to be Submitted for Airport Land Use Commission Review—PUC Section 21676 identifies the types of actions that must be submitted for airport land use commission review. Local policies should either list these actions or, at a minimum, note the local agency's intent to comply with the state statute.

Other Land Use Actions Potentially Subject to Airport Land Use Commission Review—In addition to the above actions, ALUCPs may identify certain major land use actions for which referral to the Airport Land Use Commission is dependent upon agreement between the local agency and Airport Land Use Commission. If the local agency fully complies with all of the items in this general plan consistency check list or has taken the necessary steps to overrule the Airport Land Use Commission, then referral of the additional actions is voluntary. On the other hand, a local agency may elect not to incorporate all of the necessary compatibility criteria and review procedures into its own policies. In this case, referral of major land use actions to the Airport Land Use Commission is mandatory. Local policies should indicate the local agency's intentions in this regard.

Process for Compatibility Reviews by Local Agencies—If a local agency chooses to submit only the mandatory actions for Airport Land Use Commission review, then it must establish a policy indicating the procedures which will be used to assure that airport compatibility criteria are addressed during review of other projects. Possibilities include: a standard review procedure checklist which includes reference to compatibility criteria; use of a geographic information system to identify all parcels within the airport influence area; etc.

Variance Procedures—Local procedures for granting of variances to the zoning ordinance must make certain that any such variances do not result in a conflict with the compatibility criteria. Any variance that involves issues of noise, safety, airspace protection, or overflight compatibility as addressed in the ALUCP must be referred to the ALUC for review.

Enforcement—Policies must be established to assure compliance with compatibility criteria during the lifetime of the development. Enforcement procedures are especially necessary with regard to limitations on usage intensities and the heights of trees. An airport combining district zoning ordinance is one means of implementing enforcement requirements.