

# STANISLAUS COUNTY AIRPORT LAND USE COMMISSION

## AGENDA

JOINT CHAMBERS  
BASEMENT FLOOR  
1010 10TH STREET, MODESTO

February 17, 2005

6:05 P.M.



The Airport Land Use Commission welcomes you to its meeting which is scheduled each quarter. Your interest is encouraged and appreciated.

**NOTICE REGARDING NON-ENGLISH SPEAKERS:** Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedure Section 185 which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the Stanislaus County Airport Land Use Commission shall be in English and anyone wishing to address the Commission is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

**CONSENT CALENDAR:** **CONSENT ITEMS** are items on this agenda designated by an asterisk (\*) next to the item number, requiring a Airport Land Use Commission public hearing but which, following an initial evaluation by staff, have been found to be consistent with existing County policy and the Airport Land Use Plan and are, therefore, **recommended for "routine" approval**. Prior to actual Airport Land Use Commission consideration, the Chairman will open the public hearing and ask if anyone present wishes to discuss any of the items. If you want a particular agenda item removed from "Consent", please speak up and advise the Chairman. That item will then be withdrawn from "Consent" and reviewed in detail as scheduled. The remaining "Consent" items for which there are no voice objections will be handled by a single action of the Commission.

**ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE AIRPORT LAND USE COMMISSION REGARDING A MATTER ON THE AGENDA:** While the Airport Land Use Commission welcomes and encourages participation in the Commission meetings, it would be appreciated if comments are limited to five minutes so that everyone may be heard. Matters under the jurisdiction of the Commission and not on the posted agenda may be addressed by the general public following the completion of the regular agenda and any off-agenda matters before the Commission for consideration. However, California law prohibits the Commission from taking any action on any matter which is not on the posted agenda unless it is determined to be an emergency by the Board of Supervisors.

New agenda items will not be heard after 11:00 p.m. If agenda item is not fully discussed by 12:30 a.m., it will be continued at the discretion of the Chairman.

**AMERICANS WITH DISABILITIES ACT:** Hearing devices are available for public use. If hearing devices are needed, please contact the Airport Land Use Commission Clerk at (209) 525-6330. Notification 24 hours prior to the meeting will enable the Clerk to make arrangements.

- I. **ROLL CALL:** Chair Andrew Souza, Rachelle Antinetti, Marie Assali, Tony Cusenza, Annabel Gammon, Allen Layman, Don Monaco, Mike Navarro, Jim Poore, Ray Souza, and Rich Rosa
- II. **MINUTES**
  - A. May 20, 2004
- III. **CORRESPONDENCE**
  - A. California Planning and Development Report article regarding requirement for Airport Land Use Commission review of Specific Plans, dated September 2004.
  - B. Gatzke Dillon & Ballance LLP Environmental Law Update related to CEQA requirements for Airport Land Use Commission Plans, dated January 5, 2005.

**IV. CONFLICT OF INTEREST DECLARATION**

**V. PUBLIC HEARINGS (\* Consent Items)**

**\*CONSENT ITEMS**

A. None.

**NON-CONSENT ITEMS**

A. None.

**VI. OTHER MATTERS (Not Public Hearings)**

- A. Approve a Proposed Format for the Avigation Easement Required by the Airport Land Use Commission Plan
- B. Provide Direction to Staff on How the Avigation Easement Requirement Is to Be Applied to Development Projects Subject to Review under the Airport Land Use Commission Plan

**VII. CITIZENS' FORUM**

**VIII. ADDITIONAL MATTERS AT DISCRETION OF CHAIRPERSON**

**IX. ADJOURNMENT**



February 17, 2005

TO: Stanislaus County Airport Land Use Commission  
FROM: Debra Whitmore, Senior Planner  
SUBJECT: **APPROVE A PROPOSED FORMAT FOR THE AVIGATION EASEMENT  
REQUIRED BY THE AIRPORT LAND USE COMMISSION PLAN**

**ISSUE**

Under the Airport Land Use Commission Plan, development projects within Area 3 (Approach and Transitional Surfaces) of the planning area boundary are required to record an avigation easement as a standard condition of approval for all land use types. To comply with this requirement, several applicants have recently requested staff to provide a model easement so they can comply with this condition. In response, staff has provided a copy of the Avigation and Hazard Easement prepared by the Modesto City-County Airport. After some discussion with County Counsel, staff has been advised to bring this item to the Airport Land Use Commission so that the Commission may approve a format for a model easement to be used for these purposes.

**BACKGROUND**

The Airport Land Use Commission Plan establishes the criteria to be used to determine the compatibility of development projects falling within planning area boundaries of five airports in the Stanislaus County area. The compatibility criteria, entitled Airport Land Use Compatibility Listing (see Exhibit "A"), identify a range of uses and their compatibility within each of the safety zones established for an airport. According to the Listing, uses may be prohibited, compatible or conditionally approvable. For those uses which are determined to be conditionally approval, the Plan identifies a standard list of conditions to be applied to the project. One of these conditions, applicable to all land use types in Area 3 (Approach and Climb-Out Extensions), requires that an avigation easement shall be provided by the project applicant (see Exhibit "B"). However, the Airport Land Use Commission Plan does not provide a model easement to assist in implementing this condition.

**WHAT IS AN AVIGATION EASEMENT?**

The following is an excerpt from the Federal Aviation Administration's Airport Improvement Program Sponsor Guide:

"An avigation easement is a conveyance of a specified property interest for a particular area that restricts the use by the owner of the surface and yet assures the owner of the easement the right and privilege of a specific use contained within the easement document.

Where it is determined that fee title is not necessary, an avigation easement may be used to secure airspace for airport and runway approach protection and for noise compatibility programs.

Such easement rights may consist of the right-of-flight of aircraft; the right to cause noise, dust, etc.; the right to remove all objects protruding into the airspace together with the right to prohibit future obstructions in the airspace; and the right of ingress/egress on the land to exercise the rights acquired. The easement may also contain any number of additional restrictions as the airport owner deems necessary.

In developing easement language, a sponsor should secure legal counsel and confirmation that the easement is sufficient to provide the intended property rights..."

### **PROPOSED AVIGATION EASEMENT LANGUAGE**

County Counsel has prepared a draft model avigation easement for review and consideration by the Commission (see Exhibit "C"). Staff collected examples of avigation easements from a number of sources, including the Federal Aviation Administration, Caltrans, the Modesto City-County Airport and other communities (i.e., the cities of Paso Robles and Livermore). The proposed avigation easement is modeled after the Modesto City-County Airport which, in turn, is based upon the Caltrans model easement.

### **RECOMMENDATION**

Staff recommends that the Commission consider and modify, as necessary, the attached model avigation easement, then:

- 1) Approve a format for a model avigation easement to fulfill the standard condition of approval required by the Airport Land Use Commission Plan; and
- 2) Authorize staff to distribute the model avigation easement to property owners, developers, and other interested parties to facilitate compliance with requirements of the Airport Land Use Commission Plan.

Attachments:           Exhibit A:       Airport Land Use Compatibility Listing  
                              Exhibit B:       Standard Conditions for Area 3 (Approach and Climb-Out Extensions)  
                              Exhibit C:       Draft Model Avigation and Hazard Easement

Attachments Available upon Request

Recording Requested By  
And For The Benefit Of:  
and  
When Recorded Mail To:

**DRAFT**

Space Above For Recorder's Use

## AVIGATION AND HAZARD EASEMENT

(California Public Utilities Code, section 21652)

In consideration of fulfillment of a condition of project approval,  
\_\_\_\_\_ [full name of property owner] ("Grantor")  
grants to \_\_\_\_\_ [name of jurisdiction or owner/operator  
of airport], its successors and assigns ("Grantee"), a perpetual and assignable avigation  
easement in and over the real property situated in the County of Stanislaus, State of  
California, more particularly identified and described in Exhibit "A" attached hereto and made a  
part hereof ("Parcel"), including a right-of-way for the free and unrestricted passage and flight  
of aircraft in, through, across and about the airspace above an imaginary plane, as such plane  
is defined by Part 77 of the Federal Aviation Regulations ("Airspace").

The easement and right-of-way herein granted shall be deemed both appurtenant to  
and for the direct benefit of that real property which now or hereinafter constitutes the  
\_\_\_\_\_ [full name of airport], as shown and identified in Exhibit "B"  
attached hereto and made a part hereof ("Airport"), 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, taking off from, landing upon, or  
operating such aircraft in or about the Airport, or in otherwise flying through the Airspace. For  
the purposes of this instrument, the Parcel shall be the servient easement and the Airport shall  
be the dominant tenement. These covenants and agreements run with the land and shall be  
binding upon the heirs, representatives, administrators, executives, successors, and assigns  
of the Grantor.

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

1. The use of and benefit of the public, including the continuing right to fly, or cause  
or permit the flight, by any and all persons, of any aircraft, of any and all kinds now or  
hereafter known, in, through, across, or about any portion of the Airspace.

2. The continuing right to cause or create, or permit or allow to be caused or created, within all Airspace above the existing surface of the Parcel, whether or not while directly over the Parcel, such noise (including any noise generated outside the boundaries of said real property) vibrations, current or other effects of air, fumes, deposits of dust or other particulate matter, illumination, and fuel consumption, fear, interference with sleep and communication and any and all other effects or interference that may be alleged to incident to or caused by the operation of aircraft over or in the vicinity of the Airport, as may be inherent in or may arise or occur from the operation of aircraft of any and all kinds, either now existing or to be developed in the future, for navigation of, or flight in air, or from landing at or taking off from the Airport, including ground run-ups an testing of aircraft engines.

3. The right to regulate or prohibit the release into the air of any substance which would impair the visibility of or otherwise interfere with the operations of aircraft such as, but not limited to, steam, dust, and smoke.

4. The right to regulate or prohibit light emissions, either direct or indirect (reflective), which might interfere with pilot vision.

5. 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 now upon, or that in the future may be upon, the Parcel, and which extend into the Airspace.

6. The right to prohibit or restrict electrical emissions which would interfere with aircraft communications systems or aircraft navigational equipment.

7. The right to regulate the height of structures and growth of trees in accordance with Federal Aviation Regulation (FAR) Part 77, Objects Affecting Navigable Air Space.

8. Any other use of easement from time to time as may be required by the Federal Aviation Administration, and/or any other entity, agency, or department of any State, Federal or local government, or designee thereof, authorized to impose rules and regulations for the operation of the Airport.

9. The right of ingress to, passage within, and egress from the Parcel, solely for the above stated purposes.

This grant of avigation easement shall not operate to deprive the Grantor, its successors or assigns, of any rights that it may otherwise have from time to time against any individual or private operator for negligent or unlawful operation of aircraft.

This easement shall be effective from this date and run with the land until such time as the Airport is no longer used as an airport.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**GRANTOR(S)**

\_\_\_\_\_  
Print Name:

[Signatures must be notarized]

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this avigation easement, \_\_\_\_\_ [*name of mortgagee*], owner and holder of a mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.

**TRUST DEED BENEFICIARIES  
and/or MORTGAGEES**

\_\_\_\_\_  
Print Name:

[Signatures must be notarized]

**ACKNOWLEDGMENT**

State of California        )  
                                  )  
County of Stanislaus     )        ss

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared  
\_\_\_\_\_, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),  
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)



**CERTIFICATE OF ACCEPTANCE  
AND CONSENT TO RECORD**

(Government Code § 27281)

This is to certify that the interest in real property conveyed by deed or grant dated \_\_\_\_\_ from \_\_\_\_\_ [name of Grantor] to the \_\_\_\_\_ [name of Grantee], a political corporation, is hereby accepted by \_\_\_\_\_ [name of legislative body; e.g., City Council], and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Name:  
Title:



February 17, 2005

TO: Stanislaus County Airport Land Use Commission

FROM: Debra Whitmore, Senior Planner

SUBJECT: **PROVIDE DIRECTION TO STAFF ON HOW THE AVIGATION EASEMENT REQUIREMENT IS TO BE APPLIED TO DEVELOPMENT PROJECTS SUBJECT TO REVIEW UNDER THE AIRPORT LAND USE COMMISSION PLAN**

### ISSUE

Under the Airport Land Use Commission Plan, development projects within Area 3 (Approach and Transitional Surfaces) of the planning area boundary are required to record an avigation easement as a standard condition of approval for all land use types. Several project sponsors have asked whether the avigation easement should apply to the entire property or should be limited to the area of the new use.

### BACKGROUND

The Airport Land Use Commission Plan establishes the criteria to be used to determine the compatibility of development projects falling within planning area boundaries of five airports in the Stanislaus County area. The compatibility criteria, entitled Airport Land Use Compatibility Listing (see Exhibit "A"), identify a range of uses and their compatibility within each of the safety zones established for an airport. One of these conditions, applicable to all land use types in Area 3 (Approach and Climb-Out Extensions), requires that an avigation easement shall be provided by the project applicant (see Exhibit "B"). Historically, the avigation easement has been requested and granted for the entire property on which the proposed use is to be located. As stated in the first paragraph of the model avigation easement (see Exhibit "C"), the easement applies over the entire parcel of land held by the property owner on which the use is proposed. It is the owner of the property, not the applicant for the proposed use, that is granting the easement over his or her property.

### AUTHORITY TO APPLY CONDITIONS OF APPROVAL TO DEVELOPMENT PROJECTS

Cities and counties rely on their police power to impose conditions of approval on development projects. The courts have long held that the regulation of land use and the imposition of conditions of approval do not create a "taking" of property if the regulation substantially advances a legitimate public interest and does not deny the property owner of the viable use of the land. Given the discretionary nature of development, the courts have also held that cities and counties may impose conditions on development as long as the conditions are reasonable, and there is a sufficient nexus between the condition imposed and the projected burden of the proposed development. These tests apply to the conditions recommended to cities and counties by the Airport Land Use Commission.

It is important to note that the city or county, not the Airport Land Use Commission, is the body that has the authority to apply the condition of approval to a development project. Under State law, the recommendations of the Commission are advisory to cities and counties. A city or county may decide not to follow the recommendations of the Airport Land Use Commission. If, however, the city or county does not incorporate the condition of approval into the project, the Airport Land Use Commission must be notified and a public hearing scheduled to determine whether the project is in conformance with the Airport Land Use Commission Plan. If, after the public hearing, the Commission decides that the project is not consistent with the Airport Land Use Commission Plan, the city or county is notified and must reconsider the project at a separate public

hearing. The project may only be approved by the city or county after overruling the Airport Land Use Commission's decision by a two-thirds vote of the governing body. If the Airport Land Use Commission's decision is overruled, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the project.

**WHAT IS "REASONABLE"?**

As stated earlier, the avigation easement language assumes that the easement is to be applied to the entire property. The rights that the property owner is granting to the jurisdiction or airport is the right to fly in, through, or across any portion of the airspace of the property; to create noise, vibration, fumes, and other effects; to regulate the release of emissions, light, and glare from the property or structures; to regulate the height of structures and trees; to enter the property for these purposes; and so on (see Exhibit "C"). Generally, these rights are being granted by the property owner because some portion of the property falls within the applicable planning area boundary and require a right applicable to the entire parcel, such as access rights, in order to effectively carry out the purpose of the easement.

As you can see from the list of uses provided in Exhibit "A," the range of uses reviewed by the Airport Land Use Commission staff is quite large, ranging from power lines to dairy farms to residential uses. Recently, one applicant questioned whether the application of the avigation easement to the entire parcel is reasonable when the discretionary use is relatively small in relation to the overall size of the parcel. For example, when an applicant requests a staff approval permit for the location of a communications tower, is it reasonable to apply the avigation easement to the entire parcel or only that portion of the property over which the tower is located?

To effectively implement this requirement in the Airport Land Use Commission Plan, staff is seeking guidance from the Commission on whether it is reasonable to apply the avigation easement to the entire parcel or only that portion of the property affected by the proposed use. Staff will present several examples for consideration.

**RECOMMENDATION**

Staff recommends that the Commission consider potential applications of the avigation easement requirement and provide guidance to staff on how the avigation easement requirement is to be applied to development projects subject to review under the Airport Land Use Commission Plan.

- |              |            |  |
|--------------|------------|--|
| Attachments: | Exhibit A: | Airport Land Use Compatibility Listing                             |
|              | Exhibit B: | Standard Conditions for Area 3 (Approach and Climb-Out Extensions) |
|              | Exhibit C: | Draft Model Avigation and Hazard Easement                          |

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Attachments Available upon Request