



TRINITY COUNTY
DEPARTMENT OF TRANSPORTATION
P.O. BOX 2490, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1365 FAX (530) 623-5312
Email: tcidot@trinitycounty.org

AIRPORT LAND USE COMMISSION
STAFF REPORT

AGENDA ITEM: 9c
MEETING DATE: October 8, 2009
BY: Jan Smith, Sr. Environmental Compliance Specialist,
Department of Transportation

**RE: CEQA REVIEW REQUIREMENTS FOR ADOPTION OF AIRPORT LAND USE
COMPATIBILITY PLAN (ALUCP)**

BACKGROUND:

Adoption of the Trinity County ALUCP could be subject to the California Environmental Quality Act, if it is determined to result in a direct or indirect physical effect on the environment. The Caltrans Airport Land Use Planning Handbook contains a section on Environmental Document Requirements (Pages 2-16 through 2-18). It describes two approaches: The CEQA Document Approach and the CEQA Exemption Approach.

Under the Document Approach it mentions an Initial Study/ Negative Declaration and an Environmental Impact Report (EIR). The section states that an Initial Study/ Negative Declaration is the most common CEQA route taken by ALUCs when adopting a compatibility plan. It states that an EIR is usually used only if the ALUCP is prepared in conjunction with a local specific plan or airport master plan for which an EIR is necessary.

The Exemption Approach also has two avenues; a Categorical Exemption and a General Exemption. Class 8 is the most common Categorical Exemption claimed, for "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement or protection of the environment." However, if the ALUCP would relax existing standards and allow additional development, this exemption would not apply. The General Exemption is also known as the "Common Sense Exemption" or the "Class 3" exemption, because it can be found in the CEQA Guidelines Section 15061(b)(3) under Review for Exemption, which states:

"The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

The Handbook states that some ALUCs regard adoption of a compatibility plan to be statutorily exempt from CEQA, based upon a determination that adoption of the ALUCP is not a "project" as defined by CEQA. To be a project, an action must be one that "may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment."

This exemption was put to the test in the California Supreme Court in 2007, in *Muzzy Ranch Company vs. Solano County Airport Land Use Commission*. In Muzzy Ranch, the Court found that the Solano County ALUC correctly filed a Notice of Exemption, and the adoption of the plan fell within the exemption from CEQA, but they failed to document why there would be no environmental impacts. The Court stated "The exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies." In that case, no amendment to general plan land use policy, land use map designations or zoning would result from adoption of the ALUCP. The ALUCP designations were consistent with the already-existing land use designations and zoning. Since the ALUCP would not allow areas to develop further than was already allowed, there would be no physical impact from adopting the ALUCP.

The plaintiffs argued that the ALUCP could displace development by making land use more restrictive within the compatibility zones, causing a physical effect because more new land uses would develop outside the compatibility zones.

DISCUSSION:

ALUC staff analyzed the possible environmental impacts of the current draft of the Trinity County ALUCP. The analysis resulted in two conclusions:

Impacts of Land Use Changes within the Compatibility Zones

The ALUCP does not propose anything that would cause a change in the General Plan land use policies or zoning that would allow more density or more dwelling units than currently allowed. It has not yet been determined how the ALUCP will be incorporated into the General Plan. However, it might be done as a zoning overlay, similar to a flood hazard overlay. In that case, the more restrictive zoning would apply.

If an ALUCP compatibility zone is more restrictive than existing zoning, development in that zone would be limited to what the ALUCP allowed, so there would be less environmental impact than under the existing zoning. If the ALUCP compatibility zone is less restrictive than existing zoning, development would still be limited to existing zoning and there would be no change.

The ALUCP would not cause or require any zoning or General Plan designations to be made less restrictive. Typically other factors, such as sewer or water limitations, environmental sensitivity or safety issues (e.g. floodplain) are limiting factors to density that are considered in the General Plan. The County could allow more dense development in these areas, but that would be at the discretion of the County. That action would not be a result of the ALUCP.

The ALUCP does not remove an existing impediment to development of land within the airport planning areas, since there is no stricter ALUCP in place now.

Displaced Development: Impacts of Land Use Changes outside of the Compatibility Zones

The ALUCP does not prevent development within areas in the compatibility zones that could otherwise develop. For example, Compatibility Zone D allows 4 dwelling units per acre (Residential ¼ acre minimum). Most areas within Zone D could actually increase from existing zoning density, if allowed by the County, without violating the ALUCP. There are no residential or other density restrictions in Zone E or in the outlying Airport Influence Areas. Most urbanized areas in Compatibility Zones B1, B2 and C are already developed or would be eligible for infill provisions contained in the ALUCP. Most rural areas in Compatibility Zones B1, B2 and C are already zoned for minimum parcel sizes that are larger than what is required for these zones in the ALUCP (10-acre, 2.5-acre and 5-acre respectively).

Furthermore, most areas currently planned for large future residential and commercial developments are outside of Compatibility Zones A, B1, B2, C and D:

- Weaver Bally SUD
- Peltier/Trinco Subdivision
- McCoy Subdivision
- SPI lands being removed from TPZ
- Trinity Alps Industrial Park

Therefore, most current and planned development could still develop as planned with implementation of the ALUCP. It would not be forced to develop elsewhere, outside of the Compatibility Zones.

Conclusion

The ALUCP will have no physical effect on the environment, because it will not cause or lead to changes in land use that would affect the environment. The ALUCP will not remove any existing restrictions or impediments to land development. It will not require existing zoning or land use designations to be changed to allow greater density. On the other hand, it will not displace future development to other areas, because there is adequate room for any reasonably foreseeable increases in residential, commercial and industrial development both within the safety zones (where development will still be allowed and some density increases over existing zoning are still possible) and outside of the safety zones, where most areas presently planned for major developments are located.

Planning Director Rick Tippett submitted this analysis and the State Supreme Court opinion from the Muzzy Ranch Case to Derek Cole, Trinity County's legal counsel. After reviewing the materials, he replied by email as follows:

From: Derek Cole [mailto:dcole@cotalawfirm.com]
Sent: Friday, September 11, 2009 2:10 PM
To: Wendy Tyler
Subject: LSR re ALUC Plan

Wendy:

Please let Rick Tippett know that I concur that the adoption of the TC-ALUC Plan would qualify for the Category 3 CEQA exemption. I've reviewed everything and agree with his position.

Thanks,

Derek

STAFF RECOMMENDATION:

Staff recommends that the ALUC make the following finding, to formally incorporate this analysis into the administrative record:

"The Trinity County ALUC finds that adoption of the Trinity County ALUCP will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, for the reasons stated in the October 8, 2009 Staff Report: *CEQA REVIEW REQUIREMENTS FOR ADOPTION OF AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP)*, and therefore the adoption of the ALUCP is not a "project" as defined by CEQA."

Staff further recommends that the ALUC authorize the Planning Director to sign a Notice of Exemption upon adoption of the ALUCP, provided the adopted version does not contain substantial changes from the current draft that would alter this environmental analysis.

Respectfully Submitted,

Jan Smith, Sr. Environmental Compliance Specialist
Trinity County Department of Transportation