

GOVERNMENTAL PURPOSE AND NEED FOR COMMISSION ACTION EXECUTIVE SUMMARY

For the reasons described in this Staff memo and based upon the administrative record, a sound governmental purpose and need exists for the Commission to adopt the proposed Update.

The following bulleted points are discussed in greater detail below, in support of the conclusion that a sound governmental purpose and need exists for the Commission to adopt the proposed Update:

1.0 The governmental purpose and need for the Commission to adopt the proposed Update includes preserving the operation of Rio Vista Municipal Airport and protecting aviation from wildlife hazards and glint and glare.

2.0 The role of the Solano County Airport Land Use Commission includes adopting the proposed Update.

- a. The Commission is required to plan for the area around Rio Vista Municipal Airport.
- b. The Commission is required to take steps to safeguard the general welfare of the public.
- c. The Commission's authority to protect Rio Vista Municipal Airport includes authority to protect against establishment of potentially-objecting neighbors.
- d. The Commission's powers include the authority to develop height restrictions, specify the use of land, and determine building standards.
- e. The Commission has the authority to amend the Rio Vista Airport Land Use Compatibility Plan.

3.0 The Rio Vista Airport Land Use Compatibility Plan is an appropriate place for the policies of the proposed Update to be first established, and the County and cities within the County then may choose whether to make their General Plans consistent with those policies or instead to overrule those policies.

The foregoing bulleted points are explained in greater detail below.

DISCUSSION

1.0 GOVERNMENT PURPOSE AND NEED

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It has been established that glint and glare from solar facilities can interfere with pilot visibility. Measures that restrict solar facilities in such a manner that glint and glare are prevented serve to enhance the safety and efficiency of flight at Rio Vista Municipal Airport.

It has been established that wildlife hazards can create hazards to the safety and efficiency of flight operations at airports. Measures that restrict wildlife hazards near airports serve to enhance the safety and efficiency of flight at Rio Vista Municipal Airport.

2.0 COMMISSION'S ROLE

The role of the Solano County Airport Land Use Commission includes adopting the proposed Update.

The Commission's role includes adopting land use provisions such as the proposed Update.

Under the State Aeronautics Act (Pub. Util. Code, § 21001 et seq.), the Commission has an affirmative obligation to include provisions in its land use compatibility plan for the area surrounding Rio Vista Municipal Airport that will protect Rio Vista Municipal Airport from land uses incompatible with the airport's operations.

The Legislature has charged airport land use commissions around the state with this duty toward airports as part of a broad-based effort to protect the continued viability of airports and aviation in California.

Under state law, the Commission has both the legal authority and an affirmative legal obligation to protect the operations of Rio Vista Municipal Airport by imposing height, land use, and building restrictions where appropriate. (See, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 378 ("*Muzzy Ranch I*") ("Solano County Airport Land Use Commission (Commission) was established, pursuant to the State Aeronautics Act (Pub. Util. Code, § 21001 et seq.), for the purposes of ensuring the orderly expansion of airports and promulgating appropriate land use measures in Solano County (*id.*, § 21670, subd. (a)(2)).".)

In addition to the power and duty to establish appropriate height restrictions, etc., within airport land use compatibility plans, the Commission also has other powers and duties. "The powers and duties of ALUC's are described in section 21674. Those powers and duties include: '(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses. [¶] (b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. [¶] (c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675. [¶] (d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.' (§ 21674.)" (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2008) 164 Cal. App. 4th 1, 6-7 ("*Muzzy Ranch II*").)

a. The Commission is required to plan for the area around Rio Vista Municipal Airport.

The Commission is required by statute to adopt a land use compatibility plan for the area around Rio Vista Municipal Airport. (Pub. Util. Code, § 21675, subd. (a).)

b. The Commission is required to take steps to safeguard the general welfare of the public.

The purpose of the Commission's land use compatibility plans is to "provide for the orderly growth of the airports and the area surrounding the airports, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general." (Pub. Util. Code, § 21675, subd. (a).)

c. The Commission's authority to protect Rio Vista Municipal Airport includes authority to protect against establishment of potentially-objecting neighbors.

Part of the Commission's role is also to prevent, in the area around airports, the establishment of land uses that may involve persons who will voice future objections to airport operations near them (e.g., noise complaints). (*Muzzy Ranch II, supra*, 164 Cal.App.4th at p. 10.)

d. The Commission's powers include the authority to develop height restrictions, land uses, and building standards.

"In formulating an airport land use compatibility plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the airport influence area." (Pub. Util. Code, § 21675, subd. (a).)

e. The Commission has the authority to amend the Rio Vista Land Use Compatibility Plan.

"The airport land use compatibility plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year." (Pub. Util. Code, § 21675, subd. (a).) The Rio Vista Airport Land Use Compatibility Plan has not been amended previously in this calendar year.

3.0 LAND USE COMPATIBILITY PLAN'S ROLE

The Rio Vista Airport Land Use Compatibility Plan is an appropriate place for the policies of the proposed Update to be first established, and the County and cities then may choose whether to make their General Plans consistent with those policies or instead to overrule those policies.

In *Muzzy Ranch I*, the Supreme Court described the 2002 Travis Air Force Base Land Use Compatibility Plan, referring to it as the "TALUP" saying that:

“The TALUP ‘sets forth land use compatibility policies applicable to future development in the vicinity’ of Travis Air Force Base. The policies are designed ‘to ensure that future land uses in the surrounding area will be compatible with the realistically foreseeable, ultimate potential aircraft activity at the base’ and are ‘intended to be reflected in the general plans and other policy instruments adopted by the entities having jurisdiction over land uses near the base. [¶] The TALUP also sets forth criteria for determining the compatibility with Travis Air Force Base’s activities and mission of possible future development in several geographic zones.” (41 Cal.4th at pp. 378-79.)

The Supreme Court explained further:

“The TALUP, by its terms, ‘[d]efines the responsibilities of affected jurisdictions to modify their general plans and other policies for consistency with [Commission] policies and to submit certain land use development actions to the [Commission] for review.’ It provides that the County of Solano and its affected cities ‘shall utilize [the TALUP] as the basis for: (a) [m]odifying their respective general plans, zoning ordinances, and other local land use policies to assure that future land use development will be compatible with aircraft operations [and] (b) [m]aking planning decisions regarding specific development proposals involving the lands impacted by aircraft activity.’

“Pursuant to the statutory scheme authorizing it, the TALUP carries significant, binding regulatory consequences for local government in Solano County. (See, e.g., Gov. Code, § 65302.3; Pub. Util. Code, § 21676.) Government Code section 65302.3, subdivision (a) specifies that at all times a county’s or city’s general plan, as well as any applicable specific plans, ‘shall be consistent’ with an airport land use commission’s plan and that every affected county and city must amend its general and specific plans as necessary to keep them consistent with an applicable commission plan (see *id.*, subd. (b)).

“[Footnote: In its entirety, Government Code section 65302.3 provides: ‘(a) 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. [¶] (b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any Update to the plan required under Section 21675 of the Public Utilities Code. [¶] (c) If the legislative body does not concur with any provision 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.’]

“Any local agency seeking to amend its general plan in a way that affects an area governed by an airport land use compatibility plan must first refer its proposed action to the responsible commission for a determination whether the proposed action is consistent with the airport land use plan. If the commission determines the Update is not consistent, the agency may not enact it unless a two-thirds supermajority of the agency’s governing body votes to override the commission’s disapproval and the agency makes specific findings that its proposed action is consistent with the purposes of the State Aeronautics Act. (Pub. Util. Code, § 21676, subd. (b).) Thus, even in the event a local authority invokes the override provision, the State Aeronautics Act scheme still controls.

“[U]nder these statutes an airport land use compatibility plan can operate like a multijurisdictional general plan to trump the land use planning authority that affected jurisdictions might otherwise exercise through general and specific plans or zoning.”

(41 Cal.4th at pp. 384-85; see also, *Muzzy Ranch II*, *supra*, 164 Cal. App. 4th at pp. 6-7.)

After the Commission carries out its role of including protective policies in the Rio Vista Airport Land Use Compatibility Plan, the County and City of Rio Vista then choose whether (1) to make their General Plans consistent with the policies of the Rio Vista Airport Land Use Compatibility Plan, or instead (2) to override those Commission policies in the County or City General Plan after making findings pursuant to Public Utilities Code section 21676. Section 21676 provides that a “local agency” may propose to overrule the Commission by a four-fifths vote of the Board of Supervisors or City Council if it makes specific findings that the proposed action is consistent with specified purposes of the State Aeronautics Act.

Thus, under the State Aeronautics Act (“SAA”), while land use compatibility plans issued by airport land use commissions have mandatory weight, counties and cities retain the ultimate say on land use in their respective jurisdictions, through their opportunity to take further action in response to the Commission’s land use compatibility plans and consistency determinations. In other words, “the [State Aeronautics Act] giv[es] the local legislative body the ultimate authority to regulate land use within the airport land use plan area.” (*Citizens for Planning Responsibly v. County of San Luis Obispo* (2009) 176 Cal. App. 4th 357, 372-73.)

* * *

For the above reasons, a sound governmental purpose and need exists for the Commission’s adoption of the proposed Update, and the Commission has the legal authority to adopt the proposed Update.

The Commission has a *general* affirmative legal obligation to protect the operations of Rio Vista Municipal Airport; adoption of this *particular* proposed Update is a discretionary action, and the Commission is not legally required to adopt it if the Commission itself determines that this proposed Update is not appropriate under the circumstances.