

SAMPLE IMPLEMENTATION DOCUMENTS

The City of Ontario is responsible for compatibility planning around Ontario International Airport and implementing the compatibility criteria set forth in the *Ontario International Airport Land Use Compatibility Plan*. Chapter 1 describes how general plans and specific plans can be modified to achieve consistency with compatibility plans. However, implementation of airport land use compatibility plans go beyond general plan consistency, other types of documents are also needed to assist with implementing *Compatibility Plan* policies. Samples of such implementation documents are included in this appendix.

General Plan Consistency Checklist

A *Compatibility Plan* is separate and distinct from a jurisdiction's other land use policy documents—general plans, specific plans, and zoning ordinances—yet all of the documents are expected to be made consistent with each other through incorporation of the compatibility policies into the general plans and zoning ordinances. To meet the consistency test, a general plan/policy document 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.

Table E1 provides counties and cities with modifications necessary to make their general plans and other local policies consistent with the compatibility plan.

Airport Combining Zone Ordinance

Chapter 1 of this *Compatibility Plan* describes one option for achieving consistency, the adoption of an airport overlay zone. An airport overlay zone is one way of collecting various airport-related development conditions into one local policy document. Adoption of an airport overlay zone is not required, but is suggested as an option. Table E2 describes some of the potential components of an airport overlay zone.

Buyer Awareness Measures

Buyer awareness is an umbrella category for several types of implementation documents all of which have the objective of ensuring that prospective buyers within an airport influence area, particularly residential property, are informed about the airport's impact on the property. The *Ontario International Airport Land Use Compatibility Plan* policies include each of these measures.

- ➔ **Avigation Easement**—Avigation easements transfer certain property rights from the owner of the underlying property to the owner of an airport or, in the case of military airports, to a local government agency on behalf of the federal government (the U.S. Department of Defense is not authorized to accept avigation easements). Specific easement dedication requirements are set forth

in Chapter 2. Also, airports may require aviation easements in conjunction with programs for noise insulation of existing structures in the airport vicinity. A sample of a standard aviation easement is included in Table E3.

- **Recorded Overflight Notification**— A recorded overflight notification informs property owners that the property is subject to aircraft overflight and generation of noise and other impacts. No restrictions on the heights of objects, requirements for marking or lighting of objects, or access to the property for these purposes are included. An overflight notification serves only as buyer acceptance of overflight conditions. Suggested wording of an overflight notification is included in Table E4. Unlike an aviation easement, overflight easement, or other type of easement, an overflight notification is not a conveyance of property rights. However, like an easement, an overflight notification is recorded on the property deed and therefore remains in effect with sale of the property to subsequent owners. Overflight notifications are generally appropriate in areas outside the 65 dB CNEL noise contour, outside Safety Zones, and within areas where the height of structures and other objects would not pose a significant potential of being airspace obstruction hazards.
- **Real Estate Disclosure**—Local jurisdictions can also establish a policy indicating that information about an airport's influence area should be disclosed to prospective buyers for all properties within an airport-vicinity as part of a title transfer. The advantage of this type of program is that it applies to previously existing land uses as well as to new development. The requirement for disclosure of information about the proximity of an airport has been present in state law for some time, but legislation adopted in 2002 and effective in January 2004 explicitly ties the requirement to the airport influence areas established by airport land use commissions (see Appendix A for excerpts from sections of the Business and Professions Code and Civil Code that define these requirements). With certain exceptions, these statutes require disclosure of a property's location within an airport influence area under any of the following three circumstances: (1) sale or lease of subdivided lands; (2) sale of common interest developments; and (3) sale of residential real property. In each case, the disclosure statement to be used is defined by state law as follows:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

Project Comment Worksheet Submittal Information

As described in Chapter 2, proposed major land use actions submitted through the ONT Inter-Agency Notification Process must include sufficient information to enable a comprehensive review of the proposed action. Table E5 provides a sample of the type of information needed for project submittals.

Table E1

General Plan Consistency Checklist

This checklist is intended to assist counties and cities with modifications necessary to make their general plans and other local policies consistent with the compatibility plan. It is also designed to facilitate compatibility reviews of these local plans and policies.

COMPATIBILITY CRITERIA

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 compatibility plan.

- **Land Use Map**—No direct conflicts should exist between proposed new land uses indicated on a general plan land use map and the land use compatibility criteria.
 - Residential densities (dwelling units per acre) should not exceed the set limits. Differences between gross and net densities and the potential for secondary dwellings on single parcels (see below) may need to be taken into account.
 - Proposed nonresidential development needs to be assessed with respect to applicable intensity limits (see below).
 - No new land uses of a type listed as specifically prohibited should be shown within affected areas.

- **Noise Element**—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 compatibility plan criteria.

- **Hazard Element**—Incorporate airspace protection policies. These should be based upon Part 77 of the Federal Aviation Regulations, but may include exceptions for objects within the high terrain zone.

Table E2

Sample Airport Overlay Zone Components

An airport overlay zone might include some or all of the following components:

- **Airspace Protection**—An airport overlay district should include airspace protection policies that establish restrictions on the height of buildings, antennas, trees, and other objects as necessary to protect the airspace needed for operation of the airport. These restrictions should be based upon the current version of the Federal Aviation Regulations (FAR) Part 77, *Objects Affecting Navigable Airspace*, Subpart C. Additions or adjustment to take into account instrument approach (TERPS) surfaces should be made as necessary. Provisions prohibiting smoke, glare, bird attractions, and other hazards to flight should also be included.
- **FAA Notification Requirements**—An airport overlay zone can be used to ensure that project developers are informed about the need for compliance with the notification requirements of FAR Part 77. Subpart B of the regulations requires that the proponent of any project which exceeds a specified set of height criteria submit a Notice of Proposed Construction or Alteration (Form 7460-1) to the Federal Aviation Administration prior to commencement of construction. The height criteria associated with this notification requirement are lower than those spelled out in Part 77, Subpart C, which define airspace obstructions. The purpose of the notification is to determine if the proposed construction would constitute a potential hazard or obstruction to flight. Notification is not required for proposed structures that would be shielded by existing structures or by natural terrain of equal or greater height, where it is obvious that the proposal would not adversely affect air safety.
- **State Regulation of Obstructions**—State law prohibits anyone from constructing or altering a structure or altering a structure or permitting an object of natural growth to exceed the heights established by FAR Part 77, Subpart C, unless the FAA has determined the object would or does not constitute a hazard to air navigation (Public Utilities Code, Section 21659). Additionally, a permit from the Department of Transportation is required for any structure taller than 500 feet above the ground unless the height is reviewed and approved by the Federal Communications Commission or the FAA (Section 21656).
- **Designation of High Noise-Impact Areas**—California state statutes require that multi-family residential structures in high-noise exposure areas be constructed so as to limit the interior noise to a Community Noise Equivalent Level of no more than 45 dB. An airport overlay district can be used to indicate the locations where special construction techniques may be necessary in order to ensure compliance with this requirement. This requirement also includes single-family dwellings.
- **Maximum Densities/Intensities**—Airport noise and safety compatibility criteria are frequently expressed in terms of dwelling units per acre for residential uses and people per acre for other land uses. These standards can either be directly included in an airport overlay zone or used to modify the underlying land use designations. For residential land uses, the correlation between the compatibility criteria and land use designations is direct. For other land uses, the method of calculating the intensity limitations needs to be defined. Alternatively, a matrix can be established indicating whether each specific type of land use is compatible with each compatibility zone. To be useful, the land use categories need to be more detailed than typically provided by general plan or zoning ordinance land use designations.
- **Real Estate Disclosure Policies**—The geographic extent and specific language of recommended real estate disclosure statements can be described in an airport overlay zone.

Source: *California Airport Land Use Planning Handbook* (January 2002)

Table E3

Typical Avigation Easement

AVIGATION EASEMENT

This indenture made this ____ day of _____, 20__, between _____ hereinafter referred to as Grantor, and the OIAA, a political subdivision in the State of California, that owns and operates Ontario International Airport in the City of Ontario, 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 Ontario International Airport official runway end elevation of 944 feet Above Mean Sea Level (AMSL), as determined by the Ontario International Airport Layout Plan, 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 hereafter 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 and 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 and 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 OIAA, for the direct benefit of the real property constituting the Ontario International 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 or allow any building structure, improvement, tree, or other object to extend into or above the Airspace so as to constitute an obstruction to air navigation or to obstruct or interfere 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 Ontario International Airport, in the City of Ontario, 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 Ontario International 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, Grantee, 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 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 OIAA is the dominant tenement.

DATED:

STATE OF } _____

 } _____

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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 (January 2002)

Table E3, continued

Sample Overflight Notification

OVERFLIGHT NOTIFICATION

This *Overflight Notification* concerns the real property situated in the City of _____, State of California, described as _____ [APN No.: ____].

This *Overflight Notification* provides notification of the condition of the above described property in recognition of, and in compliance with, CALIFORNIA BUSINESS & PROFESSIONS CODE Section 11010 and CALIFORNIA CIVIL CODE Sections 1102.6, 1103.4 and 1353, effective January 1, 2004, and related state and local regulations and consistent with policies of the Alternative Process for the City of Ontario and other participating local jurisdictions for overflight notification provided in the Ontario International Airport Land Use Compatibility Plan.

NOTICE OF AIRPORT IN VICINITY: This property is located in the vicinity of an airport and within the airport influence area. The property may be subject to some of the annoyances or inconveniences associated with proximity to an airport and aircraft operations (for example: noise, vibration, overflights or odors). Individual sensitivities to those annoyances can vary from person to person. You should consider what airport annoyances, if any, affect the Property before you complete your purchase and whether they are acceptable to you.

The Federal Aviation Administration (FAA) has regulatory authority over the operation of aircraft in flight and on the runway and taxiway surfaces at Ontario International Airport. The FAA is, therefore, exclusively responsible for airspace and air traffic management, including ensuring the safe and efficient use of navigable airspace, developing air traffic rules, assigning the use of airspace and controlling air traffic. Please contact the FAA for more detailed information regarding overflight and airspace protection issues associated with the operation of military aircraft.

Airport maintains information regarding hours of operation and other relevant information regarding airport operations. Please contact your local airport operator for more detailed information regarding airport specific operational issues including hours of operation.

This *Overflight Notification* shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property.

Effective Date: _____, 20__

Table E5

Sample Project Submittal Information

- Property location data (assessor's parcel number, street address, subdivision lot number).
- An accurately scaled map depicting the project site location in relationship to the Ontario International Airport boundary and runways.
- A description of the proposed use(s), current general plan and zoning designations, and the type of land use action being sought from the local agency (e.g., zoning variance, special use permit, building permit).
- If applicable, a detailed site plan and supporting data showing: site boundaries and size; existing uses that will remain; location of existing and proposed structures, open spaces, and water bodies; ground elevations (above mean sea level) and elevations of tops of structures and trees. Additionally:
 - For residential uses, an indication of the potential or proposed number of dwelling units per acre (excluding any secondary units).
 - For nonresidential uses, the total floor area for each type of proposed use, the number of auto parking spaces, and, if known, the number of people potentially occupying the total site or portions thereof at any one time.
- Identification of any features, during or following construction that would increase the attraction of birds or cause other wildlife hazards to aircraft operations on the airport or in its environs. Such features include, but are not limited to the following:
 - Open water areas.
 - Sediment ponds, retention basins.
 - Detention basins that hold water for more than 48 hours.
 - Artificial wetlands.
- Identification of any characteristics that could create electrical interference, confusing or bright lights, glare, smoke, or other electrical or visual hazards to aircraft flight.
- Any environmental document (initial study, draft environmental impact report, etc.) that may have been prepared for the project.
- Any staff reports regarding the project that may have been presented to local agency decision makers.
- Other relevant information that is determined to be necessary by the affected agency to enable a comprehensive review of the proposed action.