

EXHIBIT 4:

CONSISTENCY WITH THE AIR INSTALLATION COMPATIBLE USE ZONE STUDY

The Commission's adoption of the proposed Amendment would be consistent with the 2009 Travis Air Force Base Air Installation Compatible Use Zone ("AICUZ") Study.

Pursuant to Public Utilities Code section 21675, subdivision (b), the Commission's plan for any military airport "shall be consistent with the safety and noise standards in the [AICUZ] prepared for that military airport." For the reasons described in this Staff memo and based upon the administrative record, the proposed Amendment is consistent with the 2009 AICUZ.

Throughout its text, the 2009 AICUZ for Travis AFB describes and provides for operations by aircraft using the ALZ (which the AICUZ refers to as a "landing zone" or "LZ"). Although the 2009 AICUZ does not depict the ALZTA Overlay Zone nor describe a 200 feet above ground level maximum height restriction, the proposed Amendment to the Travis AFB LUCP would be consistent with the AICUZ because the Amendment would be *at least* as protective of airport operations as the applicable AICUZ.

In *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2008) 164 Cal. App. 4th 1 (*Muzzy Ranch II*), the Court held that the phrase "consistent with," in Section 21675, subdivision (b), means "compatible with" not "identical to." (164 Cal.App.4th at pp. 9, 13.) The Court held that "the Commission was not required by law to adopt the same standard as used in the AICUZ." (164 Cal.App.4th at p. 15.) Rather, "[b]ecause the purpose of Senate Bill 1468 was to protect the operations of military installations from encroachment by development, compatibility in this context means that the land use plan must be at least as protective of airport operations as the applicable AICUZ, but it need not literally adopt the safety and noise standards in the AICUZ." (164 Cal.App.4th at pp. 9-12.)

The Court's holding was based on a detailed reading of the legislative history of certain 2002 amendments to the State Aeronautics Act. Among the Court's conclusions were the following:

"[T]he intent of the [2002 amendment to the State Aeronautics Act] enactment was to protect the continued viability of military installations in California. Statutes 2002, chapter 971, section 1 provides: '(a) The Legislature finds and declares all of the following: [¶] (1) California contains an integrated system of military installations and special use airspace, connected by low-level flight corridors, that provides a key foundation for our nation's security. This integrated system provides for the training of military personnel, as well as the research, development,

testing, and evaluation of military hardware. [¶] (2) The military is a key component of California's economy comprising direct economic expenditures of over \$ 29,800,000,000 each year, making the military larger than other economic sectors of the state, including agriculture, and the military represented over 263,000 working adults in the 2000–01 fiscal year. [¶] (3) The federal Department of Defense's research, development, test, and evaluation programs, which included \$ 3,900,000,000 in direct 2000–01 fiscal year contracts in California, make an important contribution to maintaining the state's lead in technology development. [¶] (b) The Legislature therefore finds that the protection of this integrated system of military installations and special use airspace is in the public interest.' (See Sen. Bill 1468.) ...

“[T]he act was a response to base closures after nearby development interfered with base operations. A background memorandum prepared by the Senate Bill author's office explained that ‘Urban encroachment near military bases threatens to impact the missions of many of the state's military bases. As major urban population centers spring up on once vacant land at the perimeter of military bases, the interests of residents, businesses, and government collide with the facility's mission objectives The resulting constraint on mission activity is that the facility can no longer effectively fulfill its mission and could become a candidate for the next round of closures [¶] ... [¶] Closures have meant a loss of jobs on a large scale, and economic disaster for many of the communities where the bases once stood.’ ...

“Similarly, Senate and Assembly committee reports state that military officials are ‘concerned about civilian land uses encroaching on military bases. When counties and cities approve development near bases, residents often object to noisy or dangerous military operations and force their relocation.’ In a letter to the Senate Journal, the Senate Bill author wrote ‘[e]ncroachment on military activities in California is a matter of serious concern Increasingly, growth and development in the vicinity of military land and airspace has the potential to impact military readiness activities carried out in the State. ... [¶] The purpose of [Senate Bill] 1468 is to address and resolve urban encroachment impacts on military activities.’ ...

“Critically, there is no reason to think that the Legislature intended to prohibit ALUC's from adopting land use plans that prohibit more development than would be prohibited using the AICUZ safety and noise

standards. Such a construction of the statute would not advance the legislative purpose of protecting military operations, and it could undermine that purpose by prohibiting ALUC's from adopting restrictions which they deem necessary to prevent encroachment, even if those restrictions go beyond the recommendations in the relevant AICUZ. The Department of Transportation's Handbook, to which ALUC's are obligated to look for guidance (§ 21674.7, subd. (a)), emphasizes that an ALUC may need to provide greater protection for military operations than that provided by the applicable AICUZ. The Handbook states, 'AICUZ compatibility criteria tend to be minimal in terms of the degree of protection from incompatible land uses which they afford. ALUCs and local jurisdictions can and should consider setting higher standards in their own respective compatibility planning. Ensuring a high degree of land use compatibility around military airports is particularly prudent given the economic importance which major bases have to the surrounding communities and the fact that land use compatibility is one of the factors considered in the government's assessment of which bases to maintain in operation.' (Handbook, supra, at p. 3-37 [same quotation is found in current version of Handbook at p. 3-48].)

"Moreover, appellant's construction of the statute would permit the military to dictate local land use policies and prevent local authorities from concluding that more protective measures are necessary to protect local safety and health. This would be inconsistent with the ALUC's statutory responsibility for protecting the public health, safety, and welfare (§ 21674) and inconsistent with repeated assurances in the legislative history that the bill does not take away local control. The Senate Bill author's background memorandum emphasized that '[Senate Bill] 1468 would encourage coordination between local planning agencies and military bases in their jurisdictions in land use decisions to plan for growth in a way that allows military facilities to remain operative and allow cities and counties to maintain local decision-making authority. [¶] ... [¶] [Senate Bill] 1468 is not an effort to interfere with the power of local governments to make planning decisions. Rather it is aimed at encouraging cities and counties to develop growth policies that reflect the contributions that military bases make to their communities, as well as their vital importance in the state's economy and in the defense of our nation.' Various reports emphasize that the bill 'maintain[s] local decision-making authority' or 'equip[s]' local governments 'with the information to consider military bases when making land use decisions.'"

(164 Cal.App.4th at pp. 9-12 (emphasis added).)

The Court of Appeal went on to emphasize that airport land use commissions are expected under the law to be highly protective of military airports, even more so than the degree to which they must protect other types of airports:

“Several factors make compatibility planning for military facilities distinct from that for civilian airports. [¶] ... [¶] A particularly unique aspect of compatibility planning for military airports is that aircraft activity forecasts of the sort done for civilian airports are not very meaningful. Military airport activity levels depend almost exclusively on the mission of the base and on national or international events involving military participation. A typical planning approach thus is to postulate a ‘maximum mission’ for the base. ALUCs wishing to anticipate the potential for yet greater aircraft operations impacts sometimes base their planning on a multiple of the maximum mission activity levels (a multiplier of 1.5 or 2, for example).’ (Handbook, supra, at p. 3-36.) The Handbook states that the ‘best source of data’ is normally the applicable AICUZ, but, as noted previously, it cautions that the ‘AICUZ compatibility criteria tend to be minimal in terms of the degree of protection from incompatible land uses’ and that ALUC’s should ‘consider setting higher standards’ in light of the risk of base closure and the ‘economic importance which major bases have to the surrounding communities.’ (*Id.* at p. 3-37.) Accordingly, the Handbook does not obligate ALUC’s to hew closely to the recommendations in AICUZ studies and, in fact, it recommends that ALUC’s should endeavor to be more protective of base operations.”

(164 Cal.App.4th at pp. 15-16.)

Under the above standards, the Commission may adopt a land use compatibility plan provision that prohibits more development than would be prohibited using the standards in the current AICUZ. Therefore, the Commission’s adoption of the proposed Amendment would be compatible with, and therefore consistent with, the 2009 Travis AFB AICUZ.