

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

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TO: Planning Commission **Agenda of:** February 12, 2009

FROM: Shawna Purvines, Senior Planner **Item #:** 9.b

DATE: January 27, 2009

RE: OR09-0001; Amend Ordinance Code Section 17.38.062, Avigation and Noise Easement

Discussion:

Staff is bringing forward a recommendation by County Counsel to amend Ordinance Code Section 17.38.062. The amendment includes deleting in its entirety the present language of the ordinance code section, which requires that before a permit could be issued for any development activity in an airport safety zone the property owner must provide the County with an avigation easement.

This language would be replaced with new language requiring that whenever a discretionary permit or permit for a habitable structure is sought for property within an airport safety zone, the matter will be sent to the airport land use commission for review and recommendations.

There are four municipal airports in El Dorado County, the Cameron Airpark Airport, the South Lake Tahoe Airport, the Georgetown Airport and the Placerville Airport. In or about 1986, the Airport Land Use Commission adopted Comprehensive Land Use Plans ("CLUP") for each of the airports. The purpose of the CLUPs was to establish a specific boundary map and comprehensive land use plan that defines compatible types and patterns for future development that might occur in the area surrounding the Airports. The policies so developed in the CLUPs were designed to protect the safety and general welfare of people in the vicinity of the airport and to assure the safety of air navigation.

In 1987, subsequent to the adoption of the CLUPs, the County adopted Ordinance 3721 which was then codified as Chapter 17.38 of the Ordinance Code. Section 17.38.062 required the granting of an avigation and noise easement to the County for any permit issued within the airport safety zone (AA). In addition to the requirement for an avigation and noise easement, Chapter 17.38 of the Ordinance Code has sections which set forth height restrictions (section 17.38.051), noise attenuation requirements (section 17.38.052), a requirement that the development be consistent with the land use compatibility guidelines for safety contained in the

applicable airport comprehensive land use plan (section 17.38.041) and additional restrictions based upon the location of the property within certain airport safety areas of the Airport Safety District (17.38.041).

The Board of Supervisors has been required to address two situations in which a member of the public has challenged the breadth of the avigation and noise easement as a valid exercise of the police power of the County when a particular project, development or activity proposed for a property within an Airport Safety District is not deemed to specifically interfere with the airport operations or the safety of persons on the ground. This in turn has led to discussions about the effect of court decisions since the original adoption of Section 17.38.062 in 1987 on Ordinance Code section 17.38.062.

In order for the required easement to pass constitutional muster, it must be shown that there is an essential nexus between the conditions of the easement and the impacts of a proposed project on public facilities. After careful consideration of the matter by staff and counsel, it was determined that there existed a significant question as to whether the requirement for a noise and avigation easement in every instance where the property owner seeks a permit for any development or activity in an Airport Safety District goes beyond what is necessary for the protection of the public health and safety to the point that it is in conflict with the constitutional limitations upon the police power of the county as interpreted by state and federal courts in decisions since the original adoption of Ordinance Code section 17.38.062.

On June 17, 2008 the County temporarily suspended Ordinance Code section 17.38.062 for a period of 45 days. On August 5, 2008 the suspension was extended for a period of ten months and fifteen days.

Several meetings have been held with members of the State Department of Aeronautics, El Dorado County Department of Transportation, El Dorado County Transportation Commission and El Dorado County Department of Development Services. As the result of those meetings, and upon further review by staff and counsel a proposed revision of Ordinance Code section 17.38.062 has been developed. The proposed amendment would provide for review of construction that would be potentially incompatible with the airport by the Airport Land Use Commission, which is now the El Dorado County Transportation Commission and determine if an avigation and noise easement is necessary based on the use. This is consistent with the CLUPs that have been adopted for each airport. Furthermore, it is consistent with applicable General Plan policies provided below:

Policy 2.2.5.13 **[All]** Land uses adjacent to or surrounding airport facilities shall be subject to location, use, and height restrictions consistent with the Comprehensive Airport Land Use Plan....All such applications shall be reviewed by the appropriate airport commission.

Policy 6.8.1.1 All development within the Airport Safety Zones of the Placerville Airport, the Cameron Park Air Park Airport, the Georgetown Airport, and the City of South Lake Tahoe Airport shall comply with Airport Land Use Commission height, noise, and safety policies and maps as set forth in each airport's comprehensive land use plan.

The proposed revision is as follows:

No discretionary permit of any type or a permit for a new, expanded, or replacement of a legal nonconforming non-compatible structure, as defined in the Comprehensive Land Use Plans (CLUP), shall be approved for development or activity subject to the airport safety (AA) regulations until the county has forwarded the application to the agency responsible for the administration of the CLUP for review as to consistency with the plan and the county has received any recommended conditions or restrictions in order to ensure the public health, safety and general welfare, including but not limited to the requirement for an appropriate avigation and/or noise easement.

County Counsel has reviewed the proposed draft ordinance amendment and is in agreement with this recommendation.

Environmental Review

The proposed ordinance amendment would institute a review process to ensure that new construction within the airport safety zone would not adversely impact airport operations, and ensure public health and safety. It would not permit any new construction other than that already authorized by the zoning ordinance, nor would it result in any additional environmental impacts. It is likely to reduce impacts to the public relating to noise and safety. Therefore, the project has been found to be exempt from CEQA pursuant to Section 15061(b)(3), which states that projects are exempt if it can be seen that there is no possibility that the action would have a significant effect on the environment.

RECOMMENDATION:

Forward a recommendation to the Board of Supervisors to take the following actions:

1. Certify the project is exempt from environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines; and
2. Approve OR09-0001 revising Ordinance Code section 17.38.062 as proposed, deleting the existing language of the section in its entirety and adopting language that eliminates the mandatory requirement for avigation easements but instead imposes a requirement for review by the airport land use commission when a discretionary permit or permit for a new, expanded or replacement of a legal nonconforming or noncompatible use is applied for in an airport safety zone.

ATTACHMENTS

- Attachment 1 Findings
- Attachment 2 Emergency Ordinance adopted July 25, 2008
- Attachment 3 Draft Ordinance Amendment to Section 17.38.062

ATTACHMENT 1

Findings

1.0 CEQA Findings

- 1.1 This project has been found to be Exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines stating that 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 amendment to the Zoning Ordinance would not permit any new construction other than that already authorized by the zoning ordinance, nor would it result in any additional environmental impacts.

2.0 General Plan Findings

- 2.1 The proposed zoning ordinance amendment is consistent with applicable General Plan policies, specifically Policy 2.2.5.13 which requires compatibility of land uses surrounding airports and review by the Airport Land Use Commission, and 6.8.1.1 which requires compliance with adopted Community Land Use Plans for development within Airport Safety Zones.