

# State of California



## Fair Political Practices Commission

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May 30, 1984

Donald J. Fallon, Deputy  
Office of the County Counsel  
County of Santa Clara  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, CA 95110

Re: Your Request for Advice  
Our File No. A-84-086

Dear Mr. Fallon:

Thank you for your letter requesting advice from this office concerning the application of Government Code Section 84308<sup>1/</sup> to an Airport Land Use Commission ("ALUC"). You asked whether an ALUC is a "quasi-judicial board or commission" within the purview of Section 84308.

### FACTUAL BACKGROUND

Under Public Utilities Code Sections 21670, et seq., each county that has at least one public airport has an ALUC consisting of representatives from the cities in the county, the county, the airports in the county, and the general public.<sup>2/</sup> The ALUC is basically responsible for coordinating the airport planning of public agencies within the county. To accomplish this goal, the ALUC has the following powers and duties:

1. To assist local agencies in ensuring compatible land uses in the vicinity of all airports.

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> In counties of more than 4 million population, the county regional planning commission serves the function of the ALUC for the county. Pub. Util. Code Section 21670.

2. 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.

3. To prepare and adopt an airport land use plan.

4. To review the plans, regulations and other actions of local agencies and airport operators.<sup>3/</sup>

Each ALUC is responsible for formulating a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport and will safeguard the general welfare of the inhabitants in the area and the public in general. Pub. Util. Code Section 21675. As part of the plan, the ALUC may develop building height restrictions, specify appropriate land uses, and determine building standards (e.g. for soundproofing). Each ALUC establishes its own planning boundaries after hearing and consultation with the involved agencies. Pub. Util. Code Section 21675(c).

Under Public Utilities Code Section 21676, the ALUC must review the general and specific plans of local agencies which include areas covered by an ALUC plan for consistency with the ALUC plan.<sup>4/</sup> In addition, prior to the amendment of a general plan or specific plan or the adoption or approval of a zoning ordinance or building regulation within the ALUC planning boundaries, a local agency shall first refer the proposed action to the ALUC. The ALUC shall determine whether the action is consistent with the ALUC plan; a local agency may overrule the ALUC's determination by a two-thirds vote if it makes the specific finding that the action is consistent with the ALUC plan.

#### DISCUSSION

Section 84308 imposes certain restrictions and requirements on members of quasi-judicial boards and commissions with respect to campaign contributions from persons who appear before them on matters involving licenses, permits and other entitlements for use. In its Curriel opinion, the Commission held that an appointed or elected governmental body is a "quasi-judicial

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<sup>3/</sup> Pub. Util. Code Section 21674.

<sup>4/</sup> This was to have taken place in 1983.

board or commission" whenever it performs a quasi-judicial action or function.<sup>5/</sup> 8 FPFC Opinions 1 (No. 83-003, September 7, 1983 (copy enclosed)). By regulation, the Commission has provided that an action or function is quasi-judicial within the meaning of Section 84308 if it involves a license, permit or other entitlement for use, and it is clear that a court would hold the action to be quasi-judicial because it involves the application of legal rules or principles to a specific set of existing facts. 2 Cal. Adm. Code Section 18438.1 (copy enclosed). Section 18438.1 also contains examples of actions that are clearly quasi judicial and of actions that are clearly not quasi judicial.

Some of the actions that an ALUC is authorized to take are clearly not quasi judicial. These include the adoption of the comprehensive land use plan for the ALUC planning area and the adoption of general height restrictions and other general building standards applicable in the planning area.

Other ALUC actions primarily involve the review of other agencies' plans and other land use decisions. It appears that most of these actions involve an entitlement for use and the application of existing standards to a specific factual situation; therefore they are quasi-judicial actions.<sup>6/</sup> In particular, the review of individual projects are clearly quasi judicial.

In any event, Section 84308 applies only when there are personal financial interests at stake in the decision; either the subject of the proceeding (i.e., the applicant) or persons who actively support or oppose a particular decision in the proceeding must have a financial interest in the outcome before the contribution prohibition or the disclosure and disqualification requirements will apply.<sup>7/</sup>

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<sup>5/</sup> Subsection (d) of 84308 exempts legislative bodies such as boards of supervisors and city councils. This exemption does not apply to ALUCs.

<sup>6/</sup> See City of Chula Vista v. Superior Court, 133 Cal. App. 3d 472 (1982).

<sup>7/</sup> Section 84308 uses the term "financial interest" as it is defined in Section 87103 to generally mean a reasonably foreseeable material financial effect on the interest.

Donald J. Fallon, Deputy  
May 30, 1984  
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I trust that this letter answers your concerns. If a particular situation arises in the future where it is unclear whether the action is quasi judicial, please feel free to contact this office for further advice.

Sincerely,

A handwritten signature in cursive script, reading "Diane Maura Fishburn", with a long horizontal flourish extending to the right.

Diane Maura Fishburn  
Staff Counsel  
Legal Division

DMF:plh  
Enclosure

County of Santa Clara

California

Office of the County Counsel  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110  
299-2111 Area Code 408

Donald L. Clark, County Counsel

April 5, 1984

APR 16 8 52 AM '84

Barbara Milman  
Fair Political Practices Commission  
Legal Division  
Post Office Box 807  
Sacramento, California 95804

Dear Ms. Milman:

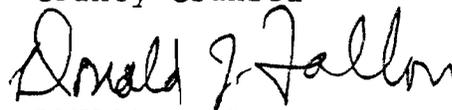
It would be greatly appreciated if your office could render an opinion as to whether or not an Airport Land Use Commission, whose powers and duties are prescribed under Public Utilities Code Sections 21674-21676, constitutes a quasi-judicial commission within the purview of Government Code Section 84308.

Enclosed is a copy of a memorandum by me to our County Airport Land Use Commission on this subject, with an attachment prepared for the California Department of Transportation, which may be of some assistance to you.

Your assistance is greatly appreciated. Please call me if I can be of any further help.

Very truly yours,

DONALD L. CLARK  
County Counsel



DONALD J. FALLON  
Deputy County Counsel

DJF:mw

cc: John Hau  
ALUC Secretary



County of Santa Clara

California

Donald L. Clark, County Counsel

M E M O R A N D U M

April 5, 1984

To: Airport Land Use Commission                      From: Donald J. Fallon  
Deputy County Counsel

Re: Possible Applicability of Government Code section 84308 to  
Airport Land Use Commission (ALUC) as constituting a quasi-  
judicial commission.

Government Code section 84308, copy attached, was added in 1982 to regulate and prohibit contributions to members of a "quasi-judicial board or commission" from applicants, agents and supporters of "an application for a license, permit, or other entitlement for use." City Councils and county boards of supervisors are exempted from the coverage of section 84308, but only while acting in that capacity, not while acting on another quasi-judicial board or commission.

In attempting to clarify the distinction between quasi-legislative and quasi-judicial bodies, the Fair Political Practices Commission recently amended its regulation (2 C.A.C. §18438.1) implementing section 84308, to provide that a board or commission is considered to be quasi-judicial if it performs what a court has, or clearly would, consider to be a quasi-judicial function. In doing so, it concluded that a Local Agency Formation Commission (LAFCO) was a quasi-legislative body based on court rulings as to LAFCO's activities. Hence, LAFCO was held to be not subject to section 84308.

The courts have distinguished between legislative actions, which create general rules or standards for the future, and quasi-judicial or adjudicatory actions which affect only the parties involved and are determined by the facts of the individual case. The adoption of general or specific plans, zone changes (even those affecting small parcels), and building standards are considered by the courts to be legislative actions; whereas, the granting or denial of individual variances or use permits are considered to be adjudicatory actions (June 1982 Supplement, Calif. Admin. Mandamus (C.E.B.) §2.8.

As discussed hereafter, the statutes which describe ALUC's powers and duties (P.U.C. §§21674-21676) are unclear whether ALUC has authority to review individual projects (which would constitute quasi-judicial action). According to the July 1983 Airport Land Use Planning Handbook prepared for the California Department of Transportation, "legal counsels for ALUCs in the state are of diverging opinions on this point" (p. 150). Because of this uncertainty and in view of the jurisdiction of the Fair Political Practices Commission in this subject area, you may wish to request an opinion from that body.



For the most part, ALUC's statutory duties clearly relate to quasi-legislative actions, viz., promulgation of general and specific plans, land use plans, regulations and standards concerning buildings, including height restrictions and sound-proofing. However, the statutes also provide that ALUC has jurisdiction to review "plans, regulations and other actions of local agencies and airport operators..." to determine consistency with ALUC's land use plan. This could be construed as conferring authority on ALUC to review individual projects, which would be considered quasi-judicial action if such "review" includes adjudicatory action rather than merely an advisory review.

## Individual Projects and Internal Plan Consistency

Related to the question of what ALUCs are to review under AB 2920 is the question of whether state law provides ALUCs with authority to review individual projects.

The previous ALUC law on this question was not very precise. It is unclear whether ALUCs had the authority to review development proposals except as they could be categorized as an "action or regulation" under the previous Section 21674. Legal counsels for ALUCs in the state are of diverging opinions on this point. AB 2920 was only somewhat more definitive--referring to ALUCs powers to review "plans, regulations and other actions of local agencies and airport operators...." Notwithstanding that uncertainty, other parts of state law with respect to local planning may provide adequate guidance on the point.

Section 65300.5 of the Government Code declares legislative intent that the "general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies...." The California Supreme Court in a recent case (Bownds v. City of Glendale [1980] 113 Cal. App. 3d, 875) noted that the purpose of this requirement has been to "ensure that decisions made by local governmental entities, which affect future growth of their communities, will be the result of considered judgment in which due consideration is given to the various interrelated elements of community life...."

Required Consistency of General and Specific Plans. Specific plans adopted under Article 8 of Chapter 3 (commencing with Section 65450) of the local planning law are required by Section 65451 of the Government Code to contain "all detailed regulations, conditions, programs and proposed legislation" necessary to carry out the provisions of the general plan's mandatory elements, including the noise, land use and circulation elements.

Required Consistency of Zoning Regulations with General Plan. Chapter 4 of the local planning law (commencing with Section 65800) specifies the legal requirements for zoning regulations. Section 65860 provides that a county or general law city zoning ordinance "shall be consistent" with the applicable general plan. Section 65803 of the Government Code states that charter cities except Los Angeles are exempt from the plan-zoning ordinance consistency requirement except to the extent required by a city charter or ordinance (many do so). Section 65800 provides that the zoning limitations imposed by state law are intended as a "minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." A development agreement authorized under Section 65867.5 of the Government Code cannot be approved "unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plans."

Variations from the requirements of a zoning ordinance are granted under Section 65906 of the Government Code. This section provides for variances only when application of the ordinance would deprive the property of privileges enjoyed by other property in the vicinity under

identical zoning conditions. Variances are not a change in zoning but a legitimately sanctioned deviation from zoning provisions. The granting of a variance is an administrative function and is discretionary. Consequently, a variance would probably not constitute an "other action" subject to review by an ALUC unless the requested condition is directly related to a matter of ALUC concern (e.g., variance from a height limitation contained in an ordinance). Under Section 65901 of the Government Code, conditional use permits may be issued under criteria listed in a zoning ordinance. Conditional use permits are probably not an "other action" subject to ALUC review unless the proposed use is clearly incompatible with the orderly function of an airport.

Required Consistency of Subdivision Maps with the General Plan. Under provisions of Section 66473.5 of the Government Code, a city or county cannot approve a subdivision map unless the city council or board of supervisors finds the proposed subdivision to be consistent with the general plan or any specific plan.

In general, therefore, unless an ALUC believes a case can be made that a local agency is not following the above-referenced sections of law in approving projects, a review of the general plan and specific plan provisions and applicable ordinances or building regulations should suffice to determine consistency of local government actions.

This general conclusion, however, does not preclude an ALUC from including within its plan the types of city or county actions it desires to review to achieve the purposes of the ALUC law. Nor does it preclude a city or county from seeking an ALUC recommendation on an individual project. It should be apparent from this and foregoing chapters that airport land use planning and achieving compatibility are not simple matters. Airport land use issues vary throughout the state. ALUC plans deal with differing conditions.

A building on one part of a development site might be airport compatible and on another part of the same site it might not be. Under a zoning ordinance, either location might be acceptable. It is important, therefore, that cities, counties and airport operators work cooperatively with the ALUCs to fulfill the coordinated planning purpose established by Section 21674 of the Public Utilities Code. Case-by-case analyses--while not always desirable and in some cases inappropriate--might be called for when a potentially incompatible development is proposed and where the potential solution to avoid incompatibility does not necessarily involve project denial.

#### Dealing with Incompatible Uses

As noted earlier in this report, AB 2920 is primarily directed at preventing new noise and safety problems, and not at addressing existing existing problems of incompatibility of land uses with airport activity. Despite enactment of AB 2920, the problem of existing incompatible uses remains one of the most difficult problems facing ALUCs, cities, counties, and airport operators.