



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
Airport Land Use Commission
STAFF REPORT**

**Item No.
5**

Meeting Date: **APRIL 4, 2013**

Subject:

Consistency Determination – Marine Corps Air Station Miramar Airport Land Use Compatibility Plan – Establishment of School for Children Within Existing Building at 11525 Sorrento Valley Road, City Of San Diego

Recommendation:

Adopt Resolution No. 2013-0006 ALUC, making a determination that the proposed project: Establishment of school for children within existing building at 11525 Sorrento Valley Road, City of San Diego, is not consistent with the Marine Corps Air Station Miramar Airport Land Use Compatibility Plan.

Background/Justification:

Project Description

The City of San Diego ("City") submitted an application for determination of consistency with the Marine Corps Air Station (MCAS) Miramar Airport Land Use Compatibility Plan ("ALUCP") which was deemed complete by ALUC staff on February 22, 2013. The project is the establishment of a school of 175 students within 26,355 square feet of an existing building at 11525 Sorrento Valley Road; an adjacent business tenant occupies the remaining 15,434 square feet of the building and is not a part of this project. The school is an enrichment program with a cultural heritage emphasis and does not satisfy compulsory California education requirements. School attendance ranges from kindergarten through 12th grade students and is supplementary to regular public schools, offering art, music, language, mathematics, and recreational activities, primarily after regular school hours, though some home-schooled students do attend during daytime hours.

The school has been operational at that location since 2011, but does not qualify as an "existing land use" over which the ALUC does not have jurisdiction. The ALUCP (MIR 2.2.18(a)(3)) defines "existing land use" to include a requirement that a valid building permit has been issued in order for a use to be vested and not subject to ALUC review. The school is only now obtaining the proper permits from the City, which constitutes the legal establishment of the use. This establishment exceeds the previous occupancy of the building (a science and engineering business), so the increased intensity of the

000017

school also does not allow the new use to be treated as an "existing land use" (MIR 2.2.18(b)).

Because the ALUCP was duly adopted by the ALUC in 2008, its parameters would have applied to the project even if a consistency determination was sought when the school's original operation commenced in 2011. Therefore, the project cannot claim that it predated any existing regulations or that it is exempt from ALUCP applicability as an "existing land use". Because the school is not legally permitted through the City, it also does not qualify as an *existing* school which can be modified or retrofitted subject to ALUCP limitations defined in MIR 3.4.6(g)(1)(second bullet).

Although the ALUC deemed the City's ALUCP implementation plan and overlay zone consistent with the ALUCP in 2011, this project was submitted for ALUC review because the project is located within the California Coastal Zone, and the California Coastal Commission had not yet approved the City's overlay zone at the time of the initial project application. The Coastal Commission has since approved the City overlay zone which implements the ALUCP, which would allow the City to act of its own accord to apply the ALUCP policies and standards. However, because the project was submitted prior to the Coastal Commission action, the City has maintained its application for consistency determination with the ALUC. With an ALUC determination, the project is eligible for potential overrule by the City according to defined procedures in the California Public Utilities Code (§21675.1).

Project Interests Disclosure

The property is owned by Higgins-Sorrento, LP of San Diego. The business owner is Multi-Cultural Academy Inc. of San Diego. The tenant is After School Learning Tree of San Diego. The project architect is Domus Studio Architecture of San Diego.

Noise Contours

The subject property is located outside the 60 decibel Community Noise Equivalent Level (dB CNEL) noise contour. The ALUCP identifies all uses located outside the 60 dB CNEL noise contour as compatible with airport uses.

Airspace Protection Surfaces

No change is proposed in the 14-foot height of the existing building.

Overflight Notification

The proposed project is located within the overflight notification area, but the ALUCP requires recordation of an overflight notification with the County Recorder only for new residential land uses.

Safety Zones

The subject property lies within the Transition Zone (TZ). The ALUCP identifies new children's schools, K-12, located within the TZ as incompatible with airport uses. The project would not qualify as infill development because, while the ALUCP allows non-residential infill development within the TZ, the ALUCP specifically provides that all

policies of the ALUCP shall apply to infill (MIR 2.11.1(a)), and thus, infill designation cannot supersede the defined incompatibility of new schools.

The ALUCP calls out educational and institutional uses as having "special safety concerns irrespective of the number of people associated with those uses" (MIR 3.4.6(g)) precisely because of the vulnerable nature of the occupancy. Children are not considered to have the adult capacity to adequately respond to emergency situations. The ratio of children as vulnerable occupants to ambulatory adults is skewed more heavily to the former, limiting the ability of the adult staff of the school to safely evacuate or otherwise tend to children in the event of an aircraft accident. It is for this safety reason that the ALUCP does not allow the establishment of new schools within the TZ because children would constitute a vulnerable occupant majority.

The project proponent has asserted that the use should be considered as an instructional studio for training and skill development and be evaluated under the ALUCP classification of indoor small assembly *room* with a capacity of 50 to 299 people—which is permitted within the TZ, subject to maximum people per acre intensity limitations. However, the project floorplan consists of numerous interior partitions and multiple classrooms, rather than a single assembly *room* that is easier to evacuate. Moreover, the City, as the applicant to the ALUC and local agency with land use jurisdiction, does not concur with that classification. The examples given in the ALUCP for the assembly room category imply that that use is for *adult* instruction or recreation, or where children would be under the control of their parents (such as religious assembly), to whom common law affords much greater latitude of care and responsibility than unrelated, supervising adults.

Given the vulnerable nature of the majority occupants, regardless of total number or frequency of attendance, the establishment of a school within the TZ is incompatible with the ALUCP. As a matter of aviation safety, the ALUCP affords the highest level of protection to the most vulnerable occupants and therefore prohibits assembly of such occupancies as educational and institutional uses within safety zones. Though the ALUC does not have jurisdiction over any other existing land uses in the project vicinity, it does have the statutory authority to apply the compatibility standards of the adopted ALUCP to new projects within the AIA.

Airport Operator Review of Project

Correspondence from MCAS Miramar (Attachment A) expresses concern about the project's proximity to Accident Potential Zone (APZ) 2 and encourages the ALUC to adhere to the ALUCP's guidelines in order to protect military operations.

Staff Recommendation

Based upon the project being an incompatible land use within the TZ, its ineligibility to qualify as an existing land use or infill development, the advice of the airport operator, and because the project's vulnerable occupancy invokes the highest standards of public safety which the ALUC is charged to uphold, this project is not consistent with the MCAS Miramar ALUCP.

Fiscal Impact:

ALUC functions are funded through the Airport Planning FY13 operating budget, and adequate funds for the subject of this staff report are budgeted within personnel costs. There are no capital or other expenditures related to this matter, and no revenue will be realized as income for budgeting purposes.

Environmental Review:

- A. This ALUC action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. This ALUC action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. This ALUC action is not a "development" as defined by the California Coastal Act. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

KEITH WILSCHETZ
DIRECTOR, AIRPORT PLANNING

Attachment A



UNITED STATES MARINE CORPS
MARINE CORPS AIR STATION
P.O. BOX 452001
SAN DIEGO, CA 92145-2001

11103
CP&L/305824
February 19, 2013

AIRPORT LAND USE COMMISSION
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
STRATEGIC PLANNING DIVISION
ATTN EDWARD GOWENS
P.O. BOX 82776
SAN DIEGO, CA 92138-2776

RE: TORREY PINES COMMUNITY PLAN; CULTURAL SCHOOL (K-12), 11525
SORRENTO VALLEY ROAD, PN 305824, APN 310-070-33

Dear Mr. Gowens,

This is in response to the project information you provided Marine Corps staff concerning a permit application for the establishment of a cultural school within the Torrey Pines Community Planning area.

The proposed site is contained within the "MCAS Miramar AICUZ Study Area" identified in the 2005 Air Installations Compatible Use Zones (AICUZ) Update for Marine Corps Air Station (MCAS) Miramar. To determine if the proposed project is compatible with AICUZ guidelines, this project has been reviewed and is: 1) within the 2008 MCAS Miramar Airport Land Use Compatibility Plan (ALUCP) Airport Influence Area (AIA) Review Area I, 2) outside the 60+ dB Community Noise Equivalent Level (CNEL) noise contours, 3) outside any Accident Potential Zones (APZ), 4) beneath the Outer Horizontal Surface of MCAS Miramar (Federal Aviation Regulation Part 77), 5) within the MCAS Miramar ALUCP Transition Zone (TZ), and 6) beneath and/or near establish fixed and rotary-wing flight corridors for aircraft transiting to and from MCAS Miramar.

While the project does not occur with any noise or safety areas associated with the MCAS Miramar AICUZ, an educational facility within the Transition Zone and in close proximity to APZ 2 does concern us. We encourage the ALUC to adhere to land use development guidelines as stated in the MCAS Miramar ALUCP for the Transition Zone and make the proper determination on compatibility with military operations.

000021

11103
CP&L/305824
February 19, 2013

This location will experience noise impacts from the Seawolf and Lakee Flight Corridors for fixed-wing operations. The site may also experience noise impacts from the Beach and Fairways Flight Corridors for helicopter operations.

Occupants will routinely see and hear military aircraft and experience varying degrees of noise and vibration. Consequently, we are recommending full disclosure of noise and visual impacts to all initial and subsequent purchasers, lessees, or other potential occupants.

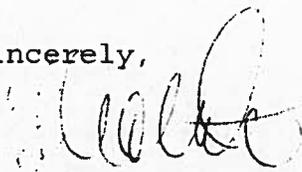
Normal hours of operation at MCAS Miramar are as follows:

Monday through Thursday	7:00 a.m. to 12:00 midnight
Friday	7:00 a.m. to 6:00 p.m.
Saturday, Sunday, Holidays	8:00 a.m. to 6:00 p.m.

MCAS Miramar is a master air station, and as such, can operate 24 hours per day, 7 days per week. Fiscal and manpower constraints, as well as efforts to reduce the noise impacts of our operations on the surrounding community, impose the above hours of operation. Circumstances frequently arise which require an extension of these operating hours.

Thank you for the opportunity to review this land use proposal. If we may be of any further assistance, please contact Mr. Juan Lias at (858) 577-6603.

Sincerely,



C. L. THORNTON
Community Plans and Liaison Officer
By direction of the Commanding Officer

000022

RESOLUTION NO. 2013-0006 ALUC

A RESOLUTION OF THE AIRPORT LAND USE COMMISSION FOR SAN DIEGO COUNTY, MAKING A DETERMINATION THAT THE PROPOSED PROJECT: ESTABLISHMENT OF SCHOOL FOR CHILDREN WITHIN EXISTING BUILDING AT 11525 SORRENTO VALLEY ROAD, CITY OF SAN DIEGO, IS NOT CONSISTENT WITH THE MARINE CORPS AIR STATION MIRAMAR AIRPORT LAND USE COMPATIBILITY PLAN

WHEREAS, the Board of the San Diego County Regional Airport Authority, acting in its capacity as the Airport Land Use Commission (ALUC) for San Diego County, pursuant to Section 21670.3 of the Public Utilities Code, was requested by the City of San Diego to determine the consistency of a proposed development project: Establishment of School for Children within Existing Building at 11525 Sorrento Valley Road, City of San Diego, which is located within the Airport Influence Area (AIA) for the Marine Corps Air Station (MCAS) Miramar Airport Land Use Compatibility Plan (ALUCP), originally adopted in 2008 and amended in 2010 and 2011; and

WHEREAS, the plans submitted to the ALUC for the proposed project indicate that it would involve the establishment of a school for children within an existing building; and

WHEREAS, the proposed project would be located outside the 60 decibel (dB) Community Noise Equivalent Level (CNEL) noise contour, and the ALUCP identifies education uses located outside the 60 dB CNEL noise contour as compatible with airport uses; and

WHEREAS, the proposed project is in compliance with the ALUCP airspace protection surfaces because no change is proposed in the height of the existing building; and

WHEREAS, the proposed project is located within the Transition Zone (TZ), and the ALUCP identifies new school uses located within the TZ as incompatible with airport uses; and

WHEREAS, the proposed project is located within the overflight notification area, but the ALUCP requires recordation of an overflight notification with the County Recorder only for new residential land uses; and

000023

WHEREAS, the ALUC has considered the information provided by staff, including information in the staff report and other relevant material regarding the project; and

WHEREAS, the ALUC has provided an opportunity for the City of San Diego, the U.S. Marine Corps, and interested members of the public to present information regarding this matter;

NOW, THEREFORE, BE IT RESOLVED that the ALUC determines that the proposed project: Establishment of School for Children within Existing Building at 11525 Sorrento Valley Road, City of San Diego, is not consistent with the MCAS Miramar ALUCP, which was originally adopted in 2008 and amended in 2010 and 2011, based upon the following facts and findings:

- (1) The proposed project involves the establishment of a school for children within an existing building.
- (2) The proposed project is located outside the 60 dB CNEL noise contour. The ALUCP identifies education uses located outside the 60 dB CNEL noise contour as compatible with airport uses.
- (3) The proposed project is in compliance with the ALUCP airspace protection surfaces because no change is proposed in the height of the existing building.
- (4) The proposed project is located within the TZ. The ALUCP identifies new school uses located within the TZ as incompatible with airport uses.
- (5) The proposed project is located within the overflight notification area. The ALUCP requires recordation of an overflight notification with the County Recorder only for new residential land uses.
- (6) Therefore, the proposed project is not consistent with the MCAS Miramar ALUCP.

BE IT FURTHER RESOLVED that this ALUC determination is not a "project" as defined by the California Environmental Quality Act (CEQA), Pub. Res. Code Section 21065, and is not a "development" as defined by the California Coastal Act, Pub. Res. Code Section 30106.

PASSED, ADOPTED AND APPROVED by the ALUC for San Diego County at a regular meeting this 4TH day of April, 2013, by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

000025

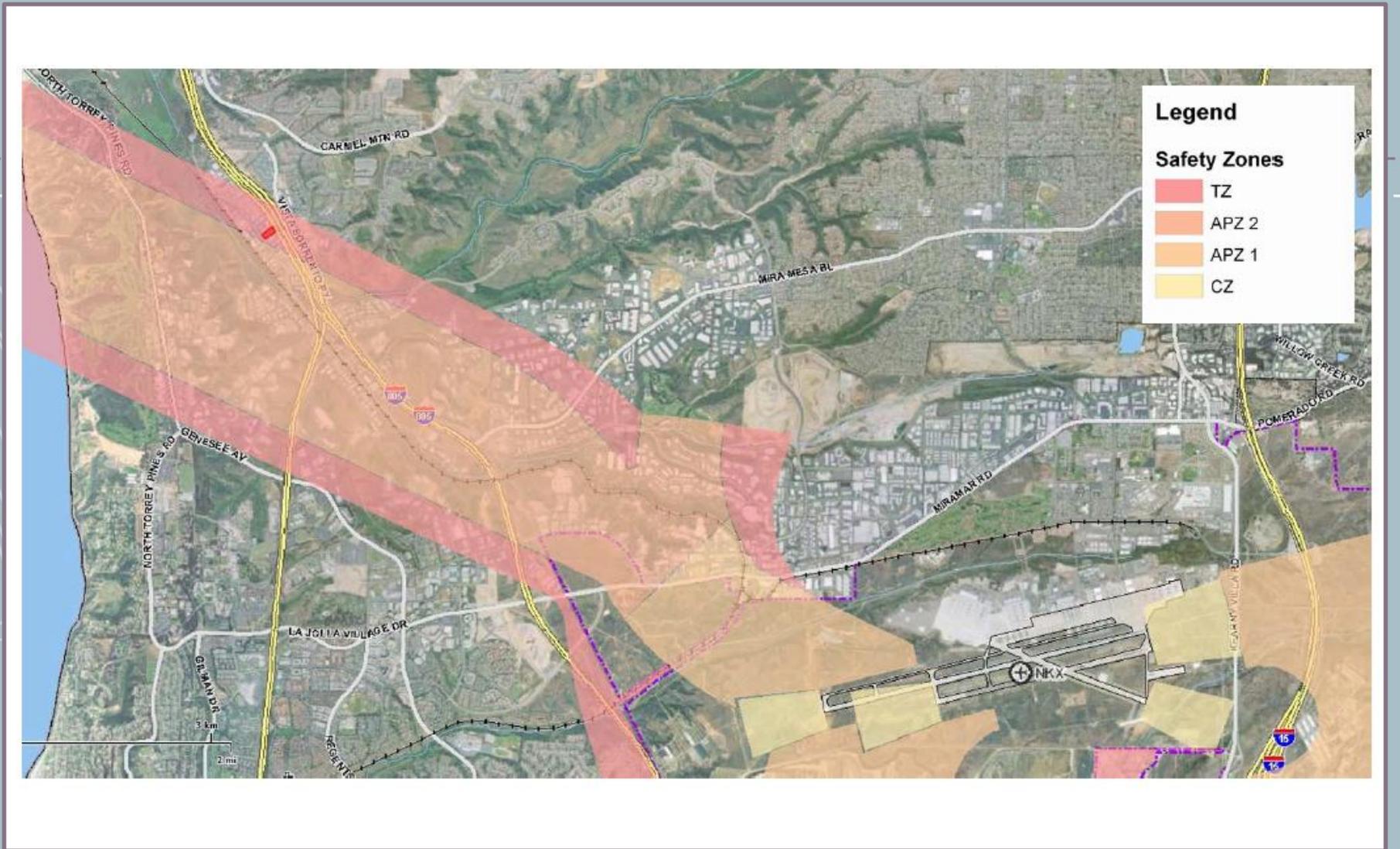


ITEM 5

Establishment of School for Children within Existing Building at 11525 Sorrento Valley Road, City of San Diego

Consistency Determination – MCAS Miramar Airport Land Use Compatibility Plan





I 1525 Sorrento Valley Road

APN 310-070-33



Coastal Zone location requires ALUC review

- City of San Diego ALUCP implementation plan and overlay zone for MCAS Miramar ALUCP were approved by the ALUC in 2011
- California Coastal Commission has not yet approved City overlay zone (within the Coastal Zone)
- Projects within the Coastal Zone come to ALUC for review until the City can implement the ALUCP

Land Use Types / Typical Uses <ul style="list-style-type: none"> Multiple land use categories and compatibility criteria may apply to a project (see Policy 3.4.7) See Policy 3.4.7(c) for limits on ancillary uses ¹ 	CBC Group*	Safety Zone**				Criteria for Conditional (yellow) Uses <ul style="list-style-type: none"> Maximum intensity limits apply to all Conditional uses Abbreviations below refer to zones in which condition specified is applicable Numbers in yellow cells are Floor Area Ratio (FAR) limitations (see Policy 3.4.6(c) and Endnote 4)
		CZ	APZ I	APZ II	TZ	
Maximum Intensity Limits (People/Acre) <ul style="list-style-type: none"> Applicable to nonresidential conditional land uses 		10	25	50	300	
Children Schools, K – 12	E-1, E-2					TZ: No new sites or land acquisition; building replacement/expansion/retrofit allowed for existing schools; expansion limited to ≤50 students See Policy 3.4.6(g)(1)



Safety Compatibility Criteria

MCAS Miramar ALUCP Table MIR-2



Does not qualify as “Existing Land Use”

- Requires issuance of a building permit for the use to be vested and not subject to ALUC review
 - Project is only now applying for a building permit
- A new occupancy must remain the same as or reduced from prior occupancy to qualify as “existing land use”
 - Project increases intensity over previous science and engineering business
- School began operation at site in 2011, when ALUCP regulations were already in place
 - Project cannot claim it predated governing rules even as an unpermitted use



Does not qualify as “Infill Development”

- Nonresidential infill development is permitted in the Transition Zone
- But all ALUCP policies otherwise apply to infill development
- Infill designation cannot allow a use defined by the ALUCP as incompatible



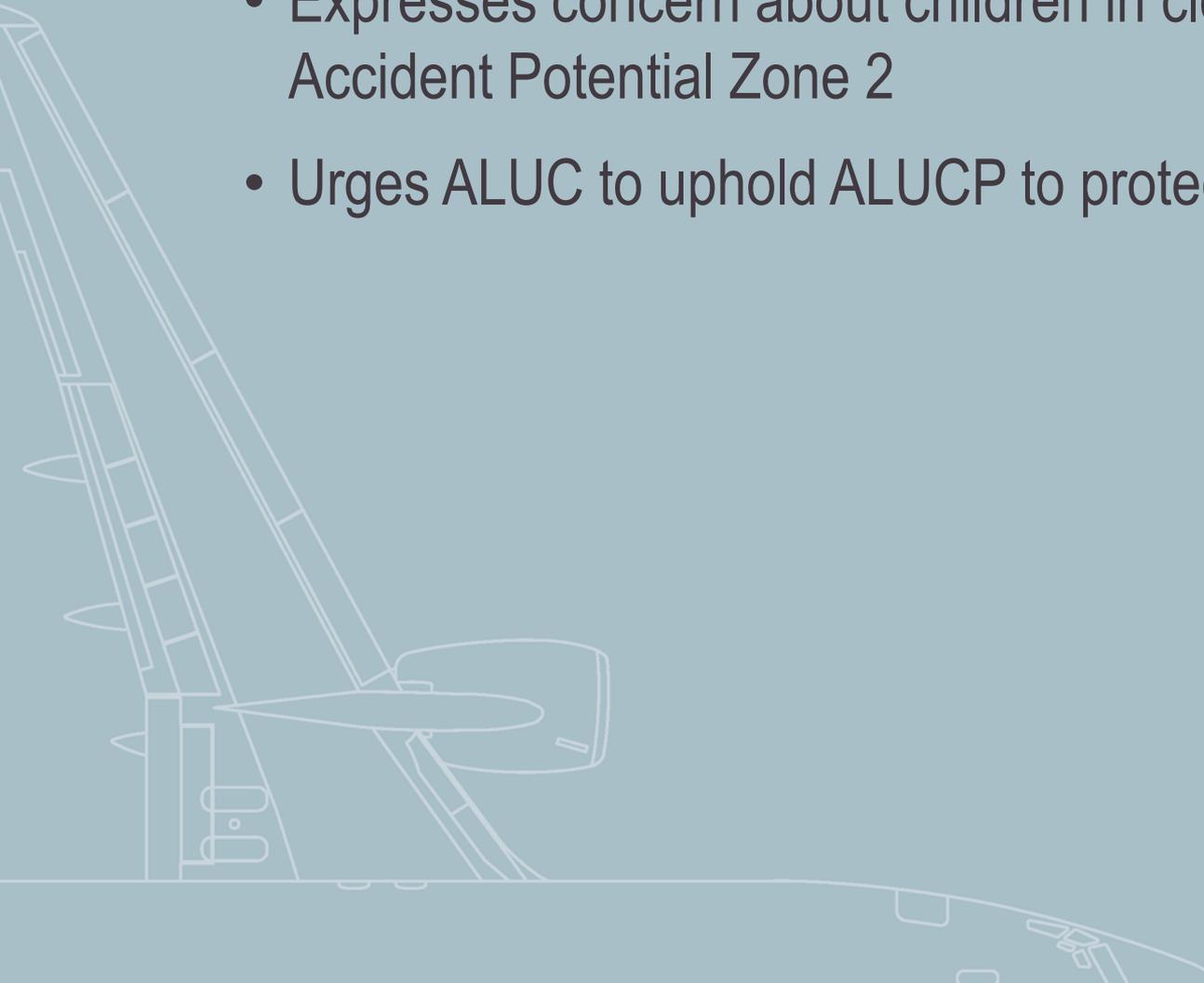
Does not qualify as indoor small assembly room

- Floorplan contains numerous interior partitions for multiple classrooms
- Multiple rooms are not as easily evacuated as single assembly room
- Majority are vulnerable occupants as children, not under direct care of parents
- City represents use as school, not generic assembly, because of character of occupancy
- Highest protection of care must apply for vulnerable occupants



Airport operator comments

- Expresses concern about children in close proximity to Accident Potential Zone 2
- Urges ALUC to uphold ALUCP to protect military operations





Use is Not Consistent with ALUCP

- Project cannot qualify as an allowed use:
 - Is not an “existing land use”
 - Did not have a vesting building permit
 - Did not predate ALUCP regulations
 - Cannot be allowed as “infill development” since new schools are already incompatible in Transition Zone
 - Does not meet “indoor small assembly room” criteria
- Airport operator advises upholding ALUCP prohibition on new schools in Transition Zone
- Use contains primarily vulnerable occupants, so highest level of safety must apply



Staff Recommendation

- Project is Not Consistent with the MCAS Miramar Airport Land Use Compatibility Plan

