

Attachment D
Comment Letter from the Airport Land Use Commission



DATE: July 15, 2019

TO: Dan Zack, Assistant Director
City of Fresno, Development and Resource Management Department

FROM: Fresno County Airport Land Use Commission
Brenda Veenendaal, Administrative Services Manager
Fresno Council of Governments

SUBJECT: Proposed overrule of the Airport Land Use Commission's finding that the City of Fresno's land use plans and regulations are inconsistent with the Fresno County Airport Land Use Compatibility Plan

The Fresno County Airport Land Use Commission (ALUC) thanks you for an opportunity to comment on the City of Fresno's proposed overrule of the ALUC's finding that the City of Fresno's land use plans and regulations are inconsistent with the December 2018 Fresno County Airport Land Use Compatibility Plan ("ALUCP").

At the May 13, 2019 meeting, City of Fresno staff presented the ALUC with City of Fresno Text Amendment P19-01026 as the City's solution to achieving consistency between the ALUCP and the City's general plan and additional land use plans, rather than amending the City's land use plans and regulations to truly be consistent with the ALUCP. The ALUC tabled the item to allow its staff and legal counsel time to research the proposal.

During the June 3, 2019 ALUC meeting, the Commissioners discussed the item once again. The minutes of that meeting are attached for your review. After much discussion, the ALUC approved a finding of consistency for Text Amendment P19-01026 on its own merit as presented, but the ALUC also ruled that the proposed Text Amendment P19-01026 by itself did not fulfill ALUCP requirements for an overall land use plan finding of consistency, as required by Government Code § 65302.3, and as requested by the City of Fresno. Therefore, the City of Fresno's general and specific plans remain inconsistent with the adopted ALUCP.

As you are aware, a new Airport Land Use Compatibility Plan was adopted by the ALUC on December 6, 2018. Within 180 calendar days of the ALUC's adoption or amendment of its ALUCP, each local agency whose jurisdiction includes an Airport Influence Area must:

1. Amend its land use plans and regulations to be consistent with the ALUCP, if needed; or
2. Overrule the ALUCP by a two-thirds vote of the local agency's governing body after adopting findings that justify the overrule and providing notice, as required by law.

To establish consistency of land use plans and regulations with the ALUCP, local agencies must eliminate conflicts that may include the following:

- Land use plans or zoning designations that permit incompatible uses within noise contours or safety zones;
- Permissible residential densities and nonresidential intensities that exceed the ALUCP's density and intensity limits in any safety zone; or
- Permissible heights of structures and other objects that would either constitute a hazard as determined by the FAA, or penetrate the 14 CFR Part 77 Surfaces.

Land use designations in local agency land use plans that reflect existing land uses do not render the local agency plans inconsistent with the ALUCP, however, local agencies must limit the expansion and reconstruction of existing land uses that are not consistent with the ALUCP in accordance with the existing land use policies and standards of the ALUCP.

If the City of Fresno moves forward with an overrule of the ALUC's findings regarding text amendment P19-01026 and finds the City's land use plans and regulations consistent with the ALUCP, the ALUC strongly encourages the City of Fresno to closely follow all required steps outlined in the ALUCP regarding the overrule process. This includes making specific findings that the action proposed (overrule) is consistent with the purposes of the ALUC statute. The essential substance of the findings that must accompany a local agency's overrule of the ALUC decision, as required by Public Utilities Code § 21670, are attached.

For your convenience, the following documents are attached for your review:

- June 3, 2019 ALUC Meeting Minutes
- Excerpts from the adopted ALUCP regarding local agency findings of consistency, overrule process, and additional ALUCP compliance

The final ALUCP document is also available online at the following link:

<https://www.fresnocog.org/project/airport-land-use-commission-fresno-county/>

Cc: Paul Caprioglio, *Fresno City Council President*

Wilma Quan, *Fresno City Manager*

Jennifer Clark, *Director, Department of Development and Resource Management*

FRESNO COUNTY AIRPORT LAND USE COMMISSION Action Summary

Date: Monday, June 3, 2019
Time: 2:00 p.m.
Place: COG Sequoia Conference Room
2035 Tulare St., Suite 201, Fresno, CA

1. CALL TO ORDER

A meeting of the Fresno County Airport Land Use Commission (ALUC) was called to order by Chairman Duarte at 2:06 p.m. Commissioner Remy was asked by Chairman Duarte to lead the flag salute.

ROLL CALL

PRESENT: **Commissioners:** Ron Duarte, Ray Remy, Daniel Yrigollen, Bill Darnell
 Proxies: Dwight Kroll

ABSENT: **Commissioners:** Sal Quintero, Nathan Magsig, Bob Beck
 Proxies: Dan Card, Mark Davis, Steve Rapada

OTHERS ATTENDING:

Brenda Veenendaal, Fresno COG Staff
Braden Duran, Fresno COG Staff
Lindsay Beavers, Fresno County Counsel

Sophia Pagoulatos, City of Fresno
Dan Zack, City of Fresno
Bill Robinson, SOL Development Associate

2. Action/Discussion Items

A. Minutes/Action Summary of the May 13, 2019 ALUC Meeting

A Motion was made by Commissioner Remy and seconded Commissioner Kroll to approve the May 8, 2019, Fresno County Airport Land Use Commission Meeting Action Summary with edits. A vote was called for and the motion carried.

The edit requested was to delete Dan Yrigollen from the list of Commissioners present.

B. City of Fresno H Street Mixed Use Development Project Proposal (Staff: Braden Duran and Brenda Veenendaal)

Braden Duran reported on this item. The City of Fresno, on behalf of TFS Investments, Inc and iT Architecture, proposed the repurposing of a city block into a Mixed-Use Development site located on the 700 block of H Street in Downtown Fresno.

The City had requested a consistency determination for the four-phase project whose proposal was to ultimately re-develop the ±1.37 acres of land. The project was located on the northeast side of H Street, between Mono and Inyo streets and next to Chukchansi Ballpark. The first three phases of the proposal called for a complete improvement of the site that included building a retail and entertainment center on a vacant lot, the demolishing of some existing buildings and parking lots, and the construction of a 4-story mixed use apartment building and entertainment venue. The fourth phase called for the demolition or re-use of other existing buildings on the site but specific plans were not known. Supporting material were included in your packet contained specific details about the project.

The City of Fresno had issued two development permit applications related to the project. The first was for approval of the repurposing of the site that included the aforementioned uses, while the second was planned development permit application for purposes of modifying certain property development standards including requiring commercial sidewalk connections and façade design development standards. Staff does not see a concern with this supplemental application as it relates to the ALUC. The property is zoned DTN (Downtown Neighborhood), is located in the Downtown Community Plan, and Fulton Specific Plan. The developer and architecture firm is also seeking an environmental assessment statutory exemption under Section 15268, Ministerial Projects, of the California Environmental (CEQA) Guidelines.

The site was located within Zone 6, the Traffic Pattern Zone (TPZ), of the Fresno Chandler Executive Airport. Specific site location in the TPZ was shown in the safety zone map included in your packet. The ALUCP restrictions on density and open land for the TPZ are not expected to be an issue for this project, and it is also within the Urban designation surrounding Chandler Airport. Other prohibited land uses in the TPZ included outdoor stadiums or other high-intensity uses, as well as hazards to flight. However, because of the project area's urban designation, high-intensity use would not be limited. Nonetheless, the proposed maximum height of the project's building is 61 1/2 feet which encompasses four stories. This proposed height would require an airspace analysis under Part 77 from the FAA, with approval by the ALUC contingent on obtaining this analysis.

Braden explained that the Part 77 analysis hadn't been filed on the project yet.

Chairman Duarte said that typically he would like to see that filed beforehand to indicate a completed application. Phillip Segrist with the City of Fresno's Development and Resource Management Department said that there is no identified timeline for filing the Part 77 application at this time, but he can file right away if necessary.

Commissioner Yrigollen said that it might be 45 days before they can file for a building permit. Mr. Segrist stated that would be acceptable.

A motion was made by Commissioner Kroll and seconded by Commissioner Darnell to approve a Conditional Finding of Consistency for the City of Fresno H Street Mixed Use Development Project Proposal contingent on receipt of Part 77 approval. A vote was called for and the motion carried.

C. City of Fresno Text Amendment P19-01036, Finding of Consistency (Staff: Brenda Veenendaal)

Bremda Veenendaal reported on this item. This item was originally presented and discussed at the Commission's May 13, 2019 regular meeting. At the conclusion of the item discussion the ALUC moved to table the item, requesting that legal counsel research two issues surrounding it:

1. Are a city's general plan and specific plans made consistent with the Airport Land Use Compatibility Plan ("ALUCP") in accordance with the requirements of California Government Code §65302.3, if the city solely amends its zoning ordinance to establish that the ALUCP is the primary plan of record, and adds new requirements for findings of consistency with the ALUCP for all discretionary entitlements, without amending the individual elements of the general plan and specific plans to be consistent with the standards of the ALUCP?
2. Can the state legislature, or the electorate, by initiative, make a law requiring high-density housing by right, and supersede the requirements of the ALUCP?

Legal counsel researched the items and forwarded findings to ALUC staff. It was then forwarded to the ALUC members for review. The findings are privileged and/or confidential and may not be shared with the public unless approved by the ALUC membership. However, a summary of the issues was submitted to Caltrans Aeronautics for review and informal comment.

The ALUC should further discuss the findings and take appropriate action.

Item background information:

Within 180 calendar days of the ALUC's adoption or amendment of their ALUCP, each local agency affected by this ALUCP must:

1. Amend its land use plans and regulations to be consistent with this ALUCP, if needed; or
2. Overrule this ALUCP by a two-thirds vote of its governing body after adopting findings that justify the overrule and providing notice, as required by law.

To establish consistency of land use plans and regulations with this ALUCP, local agencies must eliminate conflicts that may include the following:

- Land use plan or zoning designations that permit incompatible uses within noise contours or safety zones
- Permissible residential densities and nonresidential intensities that exceed this ALUCP's density and intensity limits in any safety zone
- Permissible heights that would either constitute a hazard as determined by the FAA or penetrate the 14 CFR Part 77 surfaces Land use designations in local agency land use plans that reflect existing land uses do not render the local agency plans inconsistent with this ALUCP.

However, local agencies must limit the expansion and reconstruction of existing land uses that are not consistent with this ALUCP in accordance with the existing incompatible land use policies and standards of this ALUCP. Local agency land use plans and regulations must include provisions for long-term compliance with this ALUCP. Local agencies must define the process they will follow when revising or amending land use plans and regulations, or when reviewing and approving land use projects within the AIA to ensure that they will be consistent with this ALUCP. Land use plans and regulations, including zoning, subdivision and building regulations, must include standards for reviewing land use projects for consistency with this ALUCP.

Local agencies must submit an ALUC application for consistency determination per Section 2.6.1 of the ALUCP for proposed land use plans and regulations. Once a land use plan has been found consistent with the ALUCP, future land use projects within the plan area must be reviewed for consistency if, at the time of original review, the plan consisted of only generalized land use designations without project details (e.g., site layout, density/intensity, building heights). The city of Fresno submitted the attached Fresno Municipal Code amendment as a step to showing overall ALUCP consistency and thus meeting the above requirement.

Discussion:

Staff handed out a document from legal counsel titled "Airport Land Use Commission Legal Report to the Commissioners". After reading through the report a motion was made by Commissioner Yrigollen and seconded by Commissioner Kroll to discuss the findings publicly with the attorney during the meeting. A vote was called for and the motion carried. Legal counsel then addressed her report, covering the two points she was asked to research. In essence, in regard to point one, the findings state that either the specific elements of the general plan and any specific plans must be made consistent, or the City needs to make a combining zone airport overlay so that their general and specific plans themselves are actually consistent.

In reference to point two it states that it is difficult to determine. The document cited cases and laws, providing discussion of the issue.

Dan Zack, Assistant Director Development and Resource Management, said that 60,000 parcels would have to be rezoned out of 135,000 in the City to bring their plans into consistency. This would be a massive undertaking as a result of the expanded Traffic Pattern Zone's developed in the new ALUCP. The City brought forward this proposed approach as a result of trying to figure out the fastest way to bring them to compliance. Dan Zack said the entire city was recently rezoned when the General Plan was amended. Mr. Zack also shared that the City of Fresno is not changing the way they propose a general

plan finding of consistency with this approach. A finding of consistency was approved using the same method in 2015.

Commissioner Duarte said that amendment to the General Plan was in contradiction to the City of Fresno's code that puts the ALUCP ahead of other plan amendments. He also stated that any future overrules should be done with the proper/approved process, as it was not done correctly in the past, so now the city is trying to figure out how to meet the requirements of the ALUCP.

Commissioner Kroll then recused himself due to possible conflict with his current position at the City of Clovis.

Commissioner Yrigollen said that the proposed procedure to be followed by City of Fresno home buyers that would reveal any potential land use conflicts has the potential to be missed. That buyers or builders would have to search through plans to find the ALUCP land use restrictions rather than putting them right up front (in their land use plan.)

Commissioner Yrigollen said if there are inconsistencies in the land use plans then an amendment is how they should be resolved.

Sophia Pagoulatos said that the software and land management systems are updated to catch all conflicts and staff are "well trained" on the automated system for development.

ALUC staff asked if there will be flags placed on properties during a purchase process about land use conflicts. That way it is all up front when a property is purchased.

Ms. Pagoulatos stated that the detail was unknown, but there are disclosures on addresses that are in proximity of an airport and the public can use DARM's website to access databases that show flags on parcels.

Commissioner Duarte stated his reluctance to support the proposal based on intent of use by the ALUCP and the research provided by counsel. Some of the commissioners expressed confusion about the potential future conflicts of granting a finding of consistency using the proposed method.

Staff asked if commissioners can conditionally grant a finding of consistency, for a limited time and based upon amending the land use plans.

Commissioner Duarte said he could condition the to adopt an overlay. But six months ago the ALUCP was adopted with this requirement and no effort has been made yet to find consistency until now. Commissioner Duarte also said he wanted to make sure that the City doesn't get to side-step the general plan revision at the end of the time extension.

Commissioner Yrigollen said he felt that to meet their obligation the City of Fresno would need to amend the land use portion of their plans to reflect ALUCP consistency.

Commissioner Duarte asked City of Fresno staff and ALUC legal counsel who is responsible in a reverse condemnation action.

Legal Counsel responded, saying she is not sure but didn't think the ALUC would be responsible.

Commissioner Duarte then stated he was comfortable with the ordinance (text amendment) but didn't think is provided the consistency required by the ALUCP.

Dan Zack said the City of Fresno did an in-depth analysis of the parcels in proximity of the airports and did not find any in direct conflict, in the sense of residential or other uses that aren't allowed by the ALUCP. He did say that there were some height and density conflicts that were addressed by the city's development standards. He then requested that the ALUC consider the development text code

amendment on its own merit, even if the commissioners didn't think it fulfilled the requirements for an overall finding of consistency.

After much discussion between commissioners, staff, legal counsel and the City of Fresno representatives a motion was made by Commissioner Yrigollen and seconded by Commissioner Darnell to approve the City of Fresno's request that the ALUC approve a finding of consistency for the development text code amendment on its own merit, but that it did not fulfill the requirement for an overall land use plan finding of consistency as requested. A vote was called for and the motion carried with one abstention.

3. Public Presentation

None

A. Items from Members

B. Items from Staff

Upcoming meetings (approved schedule)

- July 1, 2019
- August 5, 2019
- September 9, 2019 Note: this is the second Monday of the month.

A motion was made by Commissioner Yrigollen and seconded by Commissioner Darnell to approve the August 5, 2019 meeting to August 12, 2019. A vote was called for and the motion carried.

5. ADJOURN

3:28 p.m.

Fresno County Airport Land Use Compatibility Plan

Section 1.5.2 Override Policy

1.5.2.1 Override Process

As outlined in the Handbook, Government Code (Gov. Code) Section 65302.3 (a) states that a county's or city's general plan, as well as any applicable specific plans, "shall be consistent" with an ALUCP and that every affected county or city must amend its general and specific plans as necessary to keep them consistent with the ALUCP. If the ALUC determines the local plan to be inconsistent with the ALUCP, the local agency shall reconsider its plan, or overrule the ALUC's decision.

The override process involves three mandatory steps:

- 1) Holding a public hearing
- 2) Making specific findings that the action proposed is consistent with the purposes of the ALUC statute
- 3) Approval of the proposed action by a two-thirds vote of the agency's governing body

In accordance with PUC 21676, at least 45 days prior to the decision to overrule the ALUC, the local agency shall provide the ALUC and the Division a copy of the proposed override decision and accompanying findings. The ALUC and the Division may provide comments to the local agency's governing body within 30 days of receiving the proposed decision and findings. While the ALUC and Division comments are advisory, they must be included in the public record of any decision to overrule the ALUC.

1.5.2.2 Substance of Finding

The essential substance of the findings which accompany a local agency overruling of an ALUC decision is indicated in PUC Section 21670. Section 21670(a) indicates that five separate purposes for the legislation are stated:

- "...to provide for the orderly development of each public use airport in this state..."
- "...to provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards..."
- "...to provide for the orderly development of...the area surrounding these airports so as...to prevent the creation of new noise and safety problems."
- "...to protect the public health, safety, and welfare by ensuring the orderly expansion of airports..."
- "...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

Although findings do not need to address each of these purposes point by point, it is essential that, collectively, all of the purposes be addressed. The following sections outline possible approaches to demonstrating a proposed action that would indeed be consistent with these purposes.

(a) Providing for Orderly Development of the Airport. The findings shall document:

- (1) How the local agency has considered any adopted long-range development plans that may exist for the airport;
- (2) How the local agency plans to support development of the airport over at least the next 20 years; and
- (3) How local land use planning and zoning actions would serve to protect the approaches to the airport runways.

(b) Relationship to California Airport Noise Standards. The findings should:

- (1) Document any inconsistencies between noise element policies and noise compatibility criteria in the ALUC compatibility plan and attempt to resolve why the differences exist;
- (2) Show how noise element policies will assure conformance with the state noise airport standards; and (3) Identify any measures to be incorporated into local development to mitigate existing and foreseeable airport noise problems.

(c) Preventing Creation of New Noise and Safety Problems. The findings should:

- (1) Document any inconsistencies between the proposed land use action and safety compatibility criteria in the ALUC compatibility plan;
- (2) Describe the measures taken to assure that risks – both to people and property on the ground and to the occupants of aircraft – associated with the land use proposal are held to a minimum; and
- (3) Indicate that the proposed land use action falls within a level of acceptable risk considered to be a community norm.

(d) Protecting Public Health, Safety, and Welfare by Ensuring Orderly Expansion of the Airport. The findings should: Purpose and Scope 1-10

- (1) Document any inconsistencies between the proposed land use action and safety compatibility criteria in the ALUC compatibility plan;
- (2) Describe the measures taken to assure that risks – both to people and property on the ground and to the occupants of aircraft – associated with the land use proposal are held to a minimum; and
- (3) Indicate that the proposed land use action falls within a level of acceptable risk considered to be a community norm.

(e) Minimizing the Public's Exposure to Excessive Noise and Safety Hazards. The statute implies a quantitative assessment of noise exposure and safety hazards. The purpose of the statute is not merely to reduce the public's exposure to noise and safety hazards, but to minimize exposure in areas with excessive noise or safety concerns. To adopt a finding demonstrating consistency with this purpose, the local agency first must determine whether the existing noise exposure or safety hazards are excessive.

(1) If existing noise and safety hazards are not excessive, then the actions taken by the local agency must “prevent the creation of new noise and safety problems” (see the third bullet above).

(2) If the existing exposure is excessive, the local agency would have to show how its action in overruling an ALUC determination of inconsistency nonetheless minimizes additional exposure to those noise and safety concerns that have been identified.

(3) Finally, the local agency needs to show the extent to which land uses in the area in question are already incompatible with airport operations and how an action to overrule would not create a new incompatible use or would not expose additional persons or property to noise and safety hazards associated with existing compatible uses.

2.7 LOCAL AGENCY IMPLEMENTATION

2.7.1 Local Agency Requirements and Responsibilities

Within 180 calendar days of the ALUC’s adoption or amendment of this ALUCP, each local agency affected by this ALUCP must:

1. Amend its land use plans and regulations to be consistent with this ALUCP, if needed; or
2. Overrule this ALUCP by a two-thirds vote of its governing body after adopting findings that justify the overrule and providing notice, as required by law (See Section 1.5.2) If a local agency fails to take either action, it must follow the review process detailed in Section 2.6.

Public Utilities Code § 21676.5 provides: If the ALUC finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of the Aeronautics Act, as stated in Public Utilities Code Section 21670, the ALUC may require that the local agency submit all subsequent actions, regulations, and permits to the ALUC for review until the local agency’s general plan or specific plan is revised or the specific findings are made, pursuant to Public Utilities Code Section 21676.5.

2.7.2 Establishing Consistency of Local Agency Land Use Plans and Regulations

To establish consistency of land use plans and regulations with this ALUCP, local agencies must eliminate conflicts that may include the following:

- Land use plan or zoning designations that permit incompatible uses within noise contours or safety zones
- Permissible residential densities and nonresidential intensities that exceed this ALUCP’s density and intensity limits in any safety zone
- Permissible heights that would either constitute a hazard as determined by the FAA or penetrate the 14 CFR Part 77 surfaces

Land use designations in local agency land use plans that reflect existing land uses do not render the local agency plans inconsistent with this ALUCP. However, local agencies must limit the expansion and

reconstruction of existing land uses that are not consistent with this ALUCP in accordance with the existing incompatible land use policies and standards of this ALUCP.

2.7.3 Ensuring Long-Term Compliance with this ALUCP

Local agency land use plans and regulations must include provisions for long-term compliance with this ALUCP. Local agencies must define the process they will follow when revising or amending land use plans and regulations, or when reviewing and approving land use projects within the AIA to ensure that they will be consistent with this ALUCP. Land use plans and regulations, including zoning, subdivision and building regulations, must include standards for reviewing land use projects for consistency with this ALUCP.