



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.