

Fresno County Airport Land Use Compatibility Plan

Section 1.5.2 Overrule Policy

1.5.2.1 Overrule 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 overrule 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 overrule 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.