



RESOLUTION NO. 2009-44

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, OVERRIDING THE AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY FOR REZONE APPLICATION NO. R-05-107.

WHEREAS, on June 30, 1997, the City Council adopted the Fresno Yosemite International Airport and Environs Plan (an amendment to the 1992 Fresno Air Terminal Airport and Environs Plan); and,

WHEREAS, Richard and Donna Stoeckel, property owners, hereinafter referred to collectively as "the applicant," have filed Rezone Application No. R-05-107 and Vesting Tentative Parcel Map No. 2008-06 pertaining to approximately 2.5 acres of real property located on the north side of the East Austin Way terminus; west of North Chestnut Avenue, hereinafter referred to as the "subject property," situated in the City of Fresno, State of California, and as more particularly described hereinbelow:

The South 2 ½ acres of the North 7 ½ acres of the West 10 acres of the Southeast quarter of the Southeast quarter of Section 13, Township 13 South, Range 20 East, Mount Diablo base and Meridian, according to the Official Plat thereof; and,

WHEREAS, Rezone Application No. R-05-107 and Vesting Tentative Parcel Map No. 2008-06 have been filed to facilitate the proposed subdivision and development of the subject property with single family residential uses; and,

WHEREAS, the environmental assessment conducted for the proposed project on the subject property resulted in the filing of a Finding of Conformity to the 2025 Fresno General Plan MEIR No. 10130 dated September 02, 2008; and,

WHEREAS, Public Utilities Code, section 21676 requires that all rezone applications for property located within the planning boundary of the Fresno Air Terminal Land Use Policy Plan shall be referred to the Airport Land Use Commission for review; and,

WHEREAS, on October 06, 2008 the Airport Land Use Commission conducted a public hearing to review proposed Rezone Application No. R-05-107 and adopted a Determination of Inconsistency with the Fresno Air Terminal Land Use Policy Plan for Rezone Application No. R-05-107; and,

WHEREAS, on December 10, 2008, the Fresno City Planning Commission conducted a public

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hearing to review Rezone Application No. R-05-107, received public testimony, received and considered comments from the Planning and Development Department's report recommending approval of Rezone Application No. R-05-107 subject to conditions of zoning; and,

WHEREAS, at the same hearing, the Fresno City Planning Commission held a public hearing to consider the associated Finding of Conformity for Environmental Assessment No. R-05-107/TPM-2008-06 dated September 02, 2008; and,

WHEREAS, the Fresno City Planning Commission took action, as evidenced in Planning Commission Resolution No. 12911 to: (1) Recommend that the City Council adopt the Finding of Conformity to the 2025 Fresno General Plan MEIR No. 10130 prepared for Environmental Assessment No. R-05-107/TPM-2008-06 dated September 02, 2008; and, (2) Recommend that the City Council approve Rezone Application No. R-05-107 subject to the following conditions of zoning; and,

WHEREAS, Public Utilities Code Section 21676 provides that the governing body (City Council) of the local agency (City of Fresno) may overrule an Airport Land Use Commission Determination of Inconsistency if, after a public hearing is held, a two-thirds vote of the governing body makes specific findings that the proposed rezone application is consistent with the purposes of the Article stated in Section 21670 of the Public Utilities Code; and,

WHEREAS, Public Utilities Code Section 21676 requires that, at least 45 days prior to the decision to overrule the Airport Land Use Commission, the local agency governing body shall provide the Airport Land Use Commission and State of California Department of Transportation, Division of Aeronautics a copy of the proposed decision and findings; and,

WHEREAS, on December 22, 2008, the City provided a copy of the proposed decision and findings to both the Airport Land Use Commission and State of California Department of Transportation, Division of Aeronautics; and,

WHEREAS, on February 10, 2009, the Fresno City Council held public a hearing to consider Rezone Application No. R-05-107, and received both oral testimony and written information presented at



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the hearing regarding Rezone Application No. R-05-107 as well as all documents received from the Airport Land Use Commission related to its Finding of Inconsistency with the Fresno Air Terminal Land Use Policy Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno, based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, as follows:

1. The Council hereby adopts a resolution overriding the Airport Land Use Commission's Determination of Inconsistency for Rezone Application No. R-05-107 and finds that the proposed rezone is consistent with the purposes of the legislation establishing Airport Land Use Commissions, as set forth in Public Utilities Code, section 21670 as evidenced by the following:

- a) *There is no feasible development alternative to the proposed single family residential use for the subject property*

The subject property is located on an over-length cul-de-sac (more than 450 feet deep) within an area which has been developed exclusively with single family residential uses (excepting adjacent water recharge basin) on parcels of sizes not likely to be redeveloped with non-residential uses. Access and existing water services are inappropriate for utilization of the property for other types of uses. The subject property is designated for Low-Density Residential planned land uses by the 2025 Fresno General Plan and Hoover Community Plan. Therefore, there is no feasible alternative to the proposed single family residential use for the subject property.

- b) *The public health, safety, and welfare is being protected through the application of mitigation measures that minimize exposure to excessive noise and safety hazards within the area around the FYI airport, in which the subject property is located, to the extent said area is not already devoted to incompatible uses.*

The area in which the subject property is located is already devoted to "incompatible" uses as defined by the Fresno Yosemite International Airport and Environs Plan; and, the residential density proposed by the "development plan" (Tentative Parcel Map No. 2008-06) is less than that which already predominately exists within other areas of the 65-70 CNEL noise contour of the FYI plan. The public health, safety, and welfare is being protected through the application of mitigation measures to minimize exposure to excessive noise; and, the imposition of conditions of zoning on the subject property, which will assure the dedication of appropriate easements for airspace protection and the execution of appropriate agreements and acknowledgements to notify prospective property owners of airport operations and indemnify the City.



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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 10th day of February, 2009.

AYES: Borgeas, Brand, Dages, Perea, Xiong, Caprioglio
NOES: None
ABSENT: Sterling
ABSTAIN: None

REBECCA E. KLISCH
City Clerk

By Rebecca Klisch

APPROVED AS TO FORM

JAMES C. SANCHEZ
City Attorney

By John W. Fox
John W. Fox,
Deputy City Attorney

Date 2/4/2009

Resolution to Override the ALUC
Determination of Inconsistency for Rezone
Application No. R-05-107
Filed by Richard and Donna Stoeckel
APN No(s). 430-210-01