

SUPPLEMENTAL*Memorandum*

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 21, 2008

Approved

Paul Kruth

Date

2/22/08

COUNCIL DISTRICT: 3

SNI AREA: N/A

SUPPLEMENTAL TRANSMITTAL MEMO

SUBJECT: ADOPTION OF A RESOLUTION OVERRIDING A DETERMINATION BY THE AIRPORT LAND USE COMMISSION THAT THE PLANNED DEVELOPMENT REZONING REQUEST FILE NO. PDC06-130 IS INCONSISTENT WITH THE MAXIMUM ALLOWABLE HEIGHT POLICIES OF THE OF THE LAND USE PLAN FOR AREAS SURROUNDING SANTA CLARA COUNTY AIRPORTS DUE TO INCONSISTENCY WITH THE HEIGHT REGULATIONS AS STATED IN THE FAA PART 77 ELEVATIONS.

REASON FOR SUPPLEMENTAL OR REPLACEMENT

Please find attached responses provided by the Santa Clara County Airport Land Use Commission and the State of California Department of Transportation Division of Aeronautics to the notification that the City of San Jose City Council will consider an override of the previous ALUC finding that the subject project is inconsistent with the height policies in the "Land Use Plan for Areas Surrounding Santa Clara County Airports." Notification of the proposed override was provided to the two respective agencies 45 days in advance of the hearing. A copy of the draft City Council Resolution containing the City's findings for override and a description of the proposed project were also attached.

Susan Walton

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Susan Walton at 408-535-7800.

Attachment:

State of California Department of Transportation Division of Aeronautics letter dated February 11, 2008
Santa Clara County Airport Land Use Commission letter dated January 29, 2008

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

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February 11, 2008

Mr. Allen Tai
City of San Jose
200 East Santa Clara Street, 3rd Floor Tower
San Jose CA 93540

Dear Mr. Tai:

Planned Development Rezoning File No. PDC06-130, located on the southern corner of the intersection of Airport Parkway and Old Bayshore Highway (40, 50 Airport/APN: 230-29-065)

Thank you for including the California Department of Transportation (Department), Division of Aeronautics (Division) in the overrule process for the above-referenced project. California Public Utilities Code (PUC) Section 21676.5 provides the Department an opportunity to comment on the specific findings that a local government intends to use when proposing to overrule an Airport Land Use Commission (ALUC). We specifically look to see if the findings proposed will support what is required in PUC Section 21670 et. seq. The findings must show evidence that the city is "...minimizing the public's exposure to excessive noise and safety hazards within areas around public airports." As a tool and supplement to the PUC, the Division uses the current *California Airport Land Use Planning Handbook* (Handbook) published January 2002, to establish if a project meets the intent of the PUC.

The subject project is a proposed Rezoning, pursuant to General Plan Amendment File No. GP06-T-01 as it relates to the North San Jose Area Development Policy to allow a change of maximum building height from 150 feet to 220 feet on a 6.1 acre site and amend the text of the Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101 (City of San Jose No. GP—06-T01, APN 230-29-065). The project area encompasses one parcel located approximately 3,116 feet from the Norman Y. Mineta San Jose International Airport. (The Rezone, as presented, differs from the original General Plan Amendment height of 230 feet in that it notes a height of 220 feet). To date, we have not received a copy of the project description for this Planned Development Rezoning, noted in Paragraph 2 of the City's Draft Resolution. We reviewed the findings to be used to overrule the Santa Clara County ALUC and offer the following comments:

Finding: Section 1, A-D

The Santa Clara County ALUC previously reviewed the proposed change in text that would allow "a maximum building height of 230 feet, which exceeds the ALUC restriction of 206 feet for the subject site" and made an incompatible determination. The City of San Jose's consistent finding is primarily based on the "No Hazard" determination by the Federal Aviation Administration (FAA) and the conclusion that the ALUC's determination should be consistent with the FAA's determination. However, the determination of "No Hazard" by the FAA does not mean the State and the ALUC cannot apply stricter standards. An FAA determination of "No

Hazard” does not address whether the proposed construction is compatible with airport activity in terms of safety and noise impacts. The FAA criterion applies to property controlled by the airport proprietor-its role is with regard to the safety of aircraft operations. FAA land use safety compatibility guidance is limited to the immediate vicinity of the runway, the runway protection zones at each end of the runway, and the protection of navigable airspace. Local governments having jurisdiction over land use are typically held responsible for establishing height limitation ordinances to prevent new obstructions to the Federal Aviation Regulations Part 77. Part 77 surfaces cover a much greater geographic area, but they were established for the purposes of airspace protection, not safety compatibility. Part 77, especially the transitional surfaces, have rather minimal correlation to where accidents occur around airports. We are in concurrence with Santa Clara County ALUC’s reasons for recommendations.

The purpose of the ALUC is to provide for the orderly development areas surrounding public airports in Santa Clara County. The protection of people and property on the ground from the potential consequences of near-airport aircraft accidents is a fundamental land use compatibility-planning objective. While the chance of an aircraft injuring someone on the ground is historically quite low, an aircraft accident is a high-consequence event. To protect people and property on the ground from the risks of near-airport aircraft accidents, some form of restrictions on land use are essential.

Although the need for compatible and safe land uses near airports in California is both a local and State issue, airport staff, airport land use commissions, and airport land use compatibility plans are key to protecting an airport and the people residing, working and recreating in the vicinity of an airport. Consideration given to the issue of compatible land uses within an airport’s environs should help to relieve future conflicts between airports and their neighbors.

These comments reflect the areas of concern to the Department’s Division of Aeronautics. We appreciate the opportunity to review and comment on this project. If you have any questions, please call me at (916) 653-9603.

Sincerely,

Original Signed by

Andrew Kubik
Associate Aviation Planner

c: Mark Connolly, County of Santa Clara
Christopher Burton, City of San Jose
Lee Taubeneck, District 4
Tim Sable, District 4

ALUC

SANTA CLARA
COUNTY AIRPORT LAND
USE COMMISSION

Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA
95110

(408) 299-5786 FAX (408) 288-9198

January 29, 2008

Chris Burton, AICP
Planner
Department of Planning, Building & Code Enforcement
Planning Implementation
200 E Santa Clara Street
San Jose, Ca 95113-1905

Re: City of San Jose File No. PDC06 -130 Override, APN 230-29-065.

Foster Towers Residential Project. Planned Development Rezoning from IP Industrial Park to A(PD) Planned Development Zoning for the construction of 600 multiple dwelling units in two high-rise towers with ground floor Commercial on a 6.08 gross-acre site

Dear Mr. Burton:

At the meeting of January 23, 2008, the ALUC considered the Draft Findings from the City of San Jose regarding the proposed override of the determination made by the ALUC on March 28, 2007. At that meeting, the ALUC found the above-cited Rezoning request inconsistent with the Land Use Plan for Areas Surrounding Santa Clara County Airports. At the meeting, the ALUC moved to accept the findings, and forward the following comments on the proposed override to the City of San Jose:

On March 28, 2007, the ALUC cited specific policies from its Land Use Plan. Specifically, in accordance with General Policy G-3, which states that the FAA, FAR Part 77 Surfaces, shall restrict development height of proposed development. The ALUC found the proposed Rezoning inconsistent with its Land Use Plan, as well as the previously referred General Plan Amendment for the site. Since the project was not found consistent with the Land Use Plan, a recommended condition of an Avigation Easement that would contain such language was not conveyed.

Also, the ALUC continues to adhere to the height regulations as stated in the FAA Part 77 elevations. Although a "No-Hazard" determination has been issued by the FAA, the ALUC still finds the Rezoning and General Plan Amendment to be inconsistent with the *Land Use Plan for Areas Surrounding Santa Clara County Airports*, because the Rezoning and General Plan Amendment propose the allowance of a maximum building height that exceeds the FAA, FAR Part 77 Surfaces by over 50 feet.

ALUC

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The ALUC finds that the Federal Aviation Administration (FAA) Part 77 Imaginary Surface Height Restrictions, adopted by the ALUC, represent a reasonable consideration for public safety, for which compliance should be required.

The ALUC file number is 8969-06R-03. This is the same File number as the previous Rezoning and General Plan application referred to the ALUC. If you have any questions, please do not hesitate to contact me at (408) 299-5786, or via e-mail at: mark.connolly@pln.sccgov.org.

Sincerely,



Mark J Connolly

ALUC Staff Coordinator

Tms/mjc