

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 10, 2007

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: **GP06-T-01. PROPOSED OVERRIDE OF SANTA CLARA COUNTY AIRPORT LAND USE COMMISSION DETERMINATION REGARDING GENERAL PLAN TEXT AMENDMENT FILE NO. GP06-T-01.**

RECOMMENDATION

Continue the discussion at the next scheduled General Plan hearing cycle for the proposed override of the Santa Clara County Airport Land Use Commission (ALUC) determination that the proposed General Plan text amendment is inconsistent with safety policies found in the Land Use Plan for Areas Surrounding Santa Clara County Airports (Airport Land Use Plan) until the City Council considers the Airport Obstruction Study.

OUTCOME

Continuance of the discussion at the next scheduled General Plan hearing cycle for the proposed General Plan text amendment would provide the City Council an opportunity to consider the Airport Obstruction Study and building height policies related to aviation needs of the Norman Y. Mineta San Jose International Airport prior to considering an increase in the maximum allowable building height on the subject site. Should the City Council decide to overrule the ALUC's determination, it would allow the City Council to approve the subject General Plan text amendment.

BACKGROUND

On May 2, 2007, the Planning Commission voted 6-0-0 to recommend deferral of the subject General Plan text amendment request to the next General Plan hearing cycle. The Planning Commission's recommendation is deemed a negative recommendation pursuant to San Jose Municipal Code Section 18.08.100.

The California Public Utilities Code requires referral of all proposed General Plan amendments to the local Airport Land Use Commission (ALUC) for review. The Santa Clara County ALUC reviews such proposals according to the Land Use Plan for Areas Surrounding Santa Clara County

Airports (Airport Land Use Plan) and height standards based on Part 77 of the Federal Aviation Regulations, which are intended to provide arrival and departure paths to and from airports that are safe for air navigation. The only manner in which structures are authorized under federal law to be constructed within the Part 77 area is with a No Hazard determination by the FAA. The Part 77 imaginary surface level at project site is approximately 159 feet above ground level (AGL), and proposed General Plan text amendment requests a maximum allowable building height of 220 feet AGL. On April 26, 2006, the ALUC determined that the subject General Plan text amendment is inconsistent with ALUC Airport Land Use Plan height policies on the basis that the proposed height limit allows penetration of the Part 77 imaginary surface. The ALUC's determination that the proposed text amendment is inconsistent with its Airport Land Use Plan invokes the requirement for a two-thirds majority vote of the City Council to overrule the ALUC determination in order to approve the proposed text amendment.

Subsequent to the ALUC's determination, the applicants obtained a No Hazard determination from the FAA on June 20, 2006. On March 9, 2007, staff notified the ALUC and the CalTrans Division of Aeronautics of the City's proposed override of the ALUC's determination and provided copies to these agencies of the City's proposed override findings in a manner consistent with applicable State law and also provided these agencies with the FAA No Hazard determination. On March 28, 2007, the ALUC considered and commented on the draft resolution of the City for the proposed override of their determination. The ALUC again concluded that regardless of the FAA determination, the General Plan text amendment is inconsistent with the Airport Land Use Plan because the proposed height penetrates the Part 77 imaginary surface. CalTrans's Division of Aeronautics concurred with the ALUC stating that a FAA No Hazard determination does not address compatibility issues with airport activity in terms of noise and safety impacts.

ANALYSIS

The ALUC did not cite any specific ALUC Policy as the basis for its determination other than the proposal's penetration of the Part 77 imaginary surface (see attached ALUC letter, dated April 5, 2007). But ALUC Policy G-3 specifies that height restrictions shall be "*according to the provisions of FAR Part 77, or an alternate elevation approved by the FAA.*" The FAA No Hazard determination for a 220-foot AGL building height on the site constitutes an alternate elevation approved by the FAA. Because of the FAA No Hazard determination, the height of the structure complies with the ALUC Airport Land Use Plan. The ALUC determination upon reconsideration after the FAA No Hazard determination has no basis in ALUC's own policies and fails to comply with its own policies.

CalTrans cited the Public Utilities Code section 21670 requirements that the City must show evidence that it is "...minimizing the public's exposure to excessive noise and safety hazards within areas around public airports." In the review of high-rise building projects, the City has historically relied upon the FAA's issuance of a building project-specific No Hazard determination, finding that the development would not adversely impact airspace or Airport operations. General Plan policies require an aviation easement dedication (Aviation Policy No. 49) as a condition of approval for high-rise construction in the vicinity of airports to inform owners that the property may be subject to noise, dust, and fumes because of its proximity to an airport. Issues such as noise impacts and land use compatibility were addressed through the environmental review process conducted in

accordance with the California Environmental Quality Act (CEQA), and a specific noise study was performed for this project that indicated that noise levels will not exceed safe limits for the proposed use. Additionally, the City is requiring an obstruction/construction easement be granted to the City in order to insure that the structure will not exceed the FAA maximum No Hazard AGL height approval. As a result, the City has complied with Public Utilities Code section 21670 regarding the protection of health, safety, and welfare in areas surrounding airports.

CalTrans also incorrectly stated that the FAA No Hazard determination does not address compatibility issues with airport activity in terms of noise and safety impacts and that the FAA determination relating to land use compatibility is limited. An FAA No Hazard determination is a result of a comprehensive analysis that considers factors identified under the Code of Federal Regulations (14 C.F.R. §§ 77.31-.39.) relevant to the safe, efficient, and effective use of the navigable airspace. Therefore, the FAA No Hazard determination is a reliable indicator of whether the proposed height would have adverse impacts on the safe and efficient use of airspace. With regard to noise impacts, the project site is located outside of the noise contours and safety zones of the Norman Y. Mineta San Jose International Airport. Staff also investigated these issues through the environmental review process and determined that the proposal would generate no noise impacts that could not be adequately mitigated. Specifically, the use of site design, noise attenuation, and suppression techniques would adequately mitigate noise impacts. Such mitigation measures would be required as part of future development approval on the site.

Conclusion

The Land Use Plan and Public Utilities Code provide that a city may overrule a determination of the ALUC if it makes specific findings that the proposed project is consistent with the purposes of California Public Utilities Code Section 21670 regarding the protection of public health, safety, and welfare in areas surrounding airports. Staff asserts that the proposed text amendment is consistent with the policies in the ALUC Airport Land Use Plan based on the findings in the attached draft resolution. However, because the pending Airport Obstruction Study may result in height reductions in the Downtown and potentially affect building height policies in other areas in proximity to the Airport, the City Council should have an opportunity to consider and understand the context of allowable heights throughout the City before considering increasing building heights at any particular location. To ensure consistency in setting policy for building heights in the Airport vicinity, the Director of Planning, Building and Code Enforcement recommended continuance of the General Plan text amendment to allow the City Council to consider the Airport Obstruction Study prior to taking action on the proposed ALUC override.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST



Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

In accordance with the Public Outreach Policy, a community meeting was held on October 24, 2006 at the project site. Two individuals from the public attended the meeting and raised no concerns specific to the proposal. Property owners and occupants located within a 1,000-foot radius of the subject site also received a notice of public hearings on the subject General Plan text amendment. The Department of Planning, Building and Code Enforcement web site also contains information regarding the General Plan process, amendments, staff reports, and hearing schedules. This web site is available with the most current information regarding the status of proposed General Plan amendments. City staff also notified the Rosemary Gardens Neighborhood Association, and no concerns or comments were received to date.

COORDINATION

Review of this General Plan text amendment was coordinated with the Airport Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies as discussed in the staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Addendum to North San Jose Area Development Policy Final Program Environmental Impact Report Resolution No. 72768, and Addenda hereto, File No. GP06-T-01, adopted on April 26, 2007.

FOR 
JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions, please contact Allen Tai, Department of Planning, Building and Code Enforcement at 535-7866.

DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REQUIRED BY CALIFORNIA PUBLIC UTILITIES CODE SECTION 21676 THAT PROPOSED GENERAL PLAN TEXT AMENDMENT APPLICATION FILE NO. GP06-T-01 IS CONSISTENT WITH THE PURPOSES SET FORTH IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 21670 AND OVERRULING THE AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED PROJECT IS NOT CONSISTENT WITH THE ALUC HEIGHT POLICIES AS DEFINED BY THE "LAND USE PLAN FOR AREAS SURROUNDING SANTA CLARA COUNTY AIRPORTS"

WHEREAS, pursuant to the provisions of Section 21676 of the California Public Utilities Code ("Section 21676"), the City made a referral of the General Plan Text Amendment application number GP06-T-01 to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's plans insofar as the area covered by GP06-T-01 falls within the ALUC's referral area surrounding Mineta San Jose International Airport; and

WHEREAS, a copy of the project description for General Plan Text Amendment application number GP06-T-01 was also provided to the California Department of Transportation Division of Aeronautics on July 5, 2006; and

WHEREAS, on April 26, 2006 the ALUC, acting pursuant to its authority under Section 21676, determined that GP06-T-01 is inconsistent with ALUC height policies, as defined in the "Land Use Plan for Areas Surrounding Santa Clara County Airports" (the "Land Use Plan"), in that the "the text amendment proposes allowing a maximum building height of 220 feet, which exceeds the ALUC height restriction of 206 feet for the subject site.- It is the position of the ALUC that the Federal Aviation Administration (FAA) [14 CFR] Part 77 Imaginary Surface height restrictions, adopted by the ALUC in its Land Use Plan, represent a reasonable consideration for public safety for which compliance should be required [;]" and

WHEREAS, the ALUC's determination described in the previous paragraph did not cite any specific ALUC policy that was the basis for the determination, nor how the proposal would be inconsistent with any such specific policy; and

WHEREAS, the ALUC made its Land Use Plan inconsistency determination prior to the FAA's issuance of its "No Hazard" determination for the subject project; and

WHEREAS, ALUC Policy G-3 provides that required development height restrictions shall be “according to the provisions of FAR Part-77, or an alternate elevation approved by the FAA[;] and

WHEREAS, the City believes that the project is in compliance with FAR Part 77 through application made to the FAA by the applicant of General Plan Text Amendment GP06-T-01 and the FAA’s subsequent issuance of a “No Hazard” determination for the subject project; and

WHEREAS, further pursuant to the provisions of Section 21676 the City may after a public hearing on the matter propose to overrule a determination by the ALUC by a two-thirds vote of the City Council so long as the City Council makes specific findings that a proposed action is consistent with the purposes set forth in Section 21670 of the California Public Utilities Code (“Section 21670”); and

WHEREAS, Section 21670 provides that the purpose of these sections of the California Public Utilities Code is to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

WHEREAS, the City has notified the ALUC and the California Department of Transportation Division of Aeronautics of its proposed decision to override the ALUC’s determination on nonconformance with the height policies in the Land Use Plan and has conducted a duly noticed public hearing thereon; and

WHEREAS, the City Council heard and considered all testimony and other evidence presented, including a memorandum from the Department of Planning, Building, and Code Enforcement, related to this item; and

WHEREAS, the City Council believes it is appropriate under its authority provided in Section 21676 to override the ALUC’s determination that the General Plan Text Amendment file no. GP06-T-01 is not consistent with the Land Use Plan for the reasons set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City Council hereby makes the following findings with regard to the ALUC’s determination of inconsistency with height policies in the Land Use Plan:

- A. In order to comply with Section 21670, the City’s development review process and methodology ensures future development on the subject site would minimize the public’s exposure to excessive safety hazards by requiring future development to:

1. Comply with General Plan Aviation Policies 47 and 49 regarding protection of the operation of the Norman Y. Mineta International Airport by complying with the conditions of the FAA Determination of No Hazard and,
 2. Consistent with ALUC Policy G-3 and General Plan Aviation Policy 49, dedicate easements for (a) aviation and, (2) obstruction or other clearance easement to the City as conditions of construction approval. The clearance easement shall restrict development height to the maximum height authorized by the FAA in its No Hazard determination or no more than 220 feet above ground level.
- B. Pursuant to the notification requirements of FAR Part 77, the project applicant had submitted project plans to the FAA for a proposed building reaching a height of 220 feet above ground level or 263 feet above mean sea level at its highest point, and the FAA subsequently issued a Determination of No Hazard for the proposed building subject to conditions. The Determination of No Hazard states that the FAA had publicly circulated a notice of its aeronautical evaluation of the proposed project and no comments or objections had been submitted in response. Furthermore, there were no findings of excessive safety hazard caused by the proposed maximum building height limit.
- C. The site that is the subject of General Plan Text Amendment GP06-T-01 is located outside of the Airport Safety Zones and outside of the 60dB, 65dB, 70dB, and 75dB CNEL Contours for the San Jose International Airport and the subject site is not located under the direct flight path of the San Jose International Airport.
- D. The San Jose 2020 General Plan currently allows taller buildings on other sites in the vicinity of the subject project site; for example, the San Jose 2020 General Plan states that "in the portion of the North San Jose/Rincon de Los Esteros Redevelopment Area bounded by Brokaw Road to the south, Zanker Road to the east, Montague Expressway to the north, and along its western edge by Orchard Parkway north of Atmel Way and by Highway 101 south of Atmel Way, the maximum building height shall be defined by the airspace requirements of the San Jose International Airport as determined by the Federal Aviation Administration, but not to exceed 250 feet in any event." The ALUC did not find that the 250-foot height limit in this area to be inconsistent with its Land Use Plan. The project site is located just within 500 feet of this Industrial Core boundary and the proposed height is under the maximum allowable height of 250 feet for the Industrial Core.

SECTION 2. Therefore, based upon the findings set forth above, the City Council hereby finds that the development proposed under General Plan Text Amendment file no. GP06-T-01 is not in conflict with and would be consistent with the purposes set forth

in California Public Utilities Code Section 21670 regarding protection of public health, safety, and welfare around Mineta San Jose International Airport and that the subject project appears to be in compliance with the ALUC Land Use Plan with the subsequent issuance of a No Hazard determination by the FAA.

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SECTION 3. Based upon all of the foregoing findings and conclusions, the City Council hereby overrules the ALUC determination of nonconformance of General Plan Text Amendment file no. GP06-T-01 with the height polices within the Land Use Plan.

ADOPTED this 22nd day of May, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk



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

April 5, 2007

Allen Tai, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113

Re: City of San Jose File No. GP06-T-01 Override

General Plan Text Amendment request to revise the text section of the North San Jose Development Policy to allow a change of maximum building height from 150 feet to 230 feet above ground level (AGL), on a 6.1-acre parcel and amend the text of the Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101 (APN 230-29-065).

Dear Mr. Tai:

At the meeting of March 28, 2007, the ALUC considered comments on the proposed override of the determination made at the April 26, 2006 meeting, which found the above-cited General Plan Text Amendment and Specific Plan Text Amendment inconsistent with the Land Use Plan for Areas Surrounding Santa Clara County Airports. At the meeting, the ALUC moved to forward the following comment on the proposed override:

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 General Plan Amendment and Specific Plan Amendment to be inconsistent with the *Land Use Plan for Areas Surrounding Santa Clara County Airports*, because the amendments propose the allowance of a maximum building height of 230 feet in this specific development proposal, which exceeds the height restriction boundary of 206 feet. As a result of the No-Hazard determination, the development proposal included a reduction in the height of the specific proposal to 220 feet. The ALUC still found the General Plan Amendment and Specific Plan Amendment inconsistent with the Land Use Plan for the same reason.

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. 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,



SANTA CLARA COUNTY

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

Mark J Connolly
ALUC Staff Coordinator
Tms/mjc

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS – M.S.#40
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-4959
FAX (916) 653-9531
TTY (916) 651-6827



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April 6, 2007

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

Dear Mr. Tai:

General Plan Text Amendment File No. GP06-T-01, 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 State law, 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* published January 2002, to establish if a project meets the intent of the PUC.

The subject project is a general plan amendment to revise the text section of the general plan as it relates to the North San Jose Area Development Policy to allow a change of maximum building height from 150 feet to 230 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. We have 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 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 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

Mr. Allen Tai
April 6, 2007.
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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 Federal Aviation Regulation (FAR) Part 77. FAR Part 77 surfaces cover a much greater geographic area, but they were established for the purposes of airspace protection, not safety compatibility. FAR 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 rationale for its recommendations.

The purpose of the ALUC is to provide for the orderly development of 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 Joanne McDermott at (916) 654-5253.

Sincerely,


MARY C. FREDERICK, Chief
Division of Aeronautics

c: Mark Connelly, County of Santa Clara
Lee Taubeneck, District 4
Tim Sable, District 4



Federal Aviation Administration
Air Traffic Airspace Branch, ASW-520
2601 Meacham Blvd.
Fort Worth, TX 76137-0520

Aeronautical Study No.
2006-AWP-1100-OE

Issued Date: 06/20/2006

Debbie Kaiser
Foster Airport Parkway, LLC
250A Twin Dolphin Drive
Redwood City, CA 94065-1402

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Building
Location: San Jose, CA
Latitude: 37-22-13.74 N NAD 83
Longitude: 121-55-9.68 W
Heights: 220 feet above ground level (AGL)
263 feet above mean sea level (AMSL).

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

As a condition to this Determination, the structure is marked and/or lighted in accordance with FAA Advisory Circular 70/7460-1 70/7460-1K, Obstruction Marking and Lighting, red lights - Chapters 4,5 (Red), & 12

It is required that the enclosed FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

At least 10 days prior to start of construction
(7460-2, Part I)

Within 5 days after the construction reaches its greatest height
(7460-2, Part II)

See attachment for additional condition(s) or information.

The structure considered under this study lies in proximity to an airport and occupants may be subjected to noise from aircraft operating to and from the airport.

This determination expires on 12/20/2007 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on

the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before July 20, 2006. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, Airspace and Rules Division - Room 423, Federal Aviation Administration, 800 Independence Ave, Washington, D.C. 20591.

This determination becomes final on July 30, 2006 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Office of Airspace and Rules via telephone -- 202-267-8783 - or facsimile 202-267-9328.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (202)267-9219.
On any future correspondence concerning this matter, please refer to
Aeronautical Study Number 2006-AWP-1100-OE.

Signature Control No: 455561-472254

(DNH)

Kevin P. Haggerty
Manager, Obstruction Evaluation Service

Attachment(s)
Additional Information
Map
7460-2 Attached

Additional Information for ASN 2006-AWP-1100-OE

THE PROPOSAL IS FOR A HIGHRISE RESIDENTIAL STRUCTURE IN SAN JOSE, CALIFORNIA. THE CLOSEST PUBLIC-USE LANDING AREA IS SAN JOSE INTERNATIONAL AIRPORT (SJC).

THIS CORNER OF THE STRUCTURE IS LOCATED 0.66 NAUTICAL MILES (NM) FROM THE (SJC) AIRPORT REFERENCE POINT.

THE STRUCTURE HEIGHT AT THIS POINT IS IDENTIFIED AS AN OBSTRUCTION BY EXCEEDING THE STANDARDS OF FEDERAL AVIATION REGULATION (FAR) PART 77, SUBPART C, AS FOLLOWS:

77.23 (a) (2) , BY 1 FOOT, A HEIGHT MORE THAN 200 FEET ABOVE THE (SJC) FIELD ELEVATION (62'AMSL), WITHIN 3 NM OF THE AIRPORT REFERENCE POINT.

77.25 (a) , BY 51 FEET, A HEIGHT EXCEEDING THE (SJC) HORIZONTAL SURFACE.

FAA EVALUATION HAS FOUND THERE WOULD BE NO SIGNIFICANT ADVERSE EFFECT UPON VISUAL FLIGHT RULES (VFR) OPERATIONS, OR UPON INSTRUMENT FLIGHT RULES (IFR) OPERATIONS, OR UPON THE OPERATION OF AN AIR NAVIGATION AID (NAVAID), IF THE STRUCTURE, AT THIS CORNER, WERE BUILT ONLY TO THE MAXIMUM PROPOSED HEIGHT.

THE PROPOSAL WAS CIRCULARIZED FOR PUBLIC COMMENT. NO COMMENTS OR OBJECTIONS WERE RECEIVED.

APPLICATION OF STANDARD VFR TRAFFIC PATTERN CRITERIA FINDS THAT ALTHOUGH THE SITE UNDERLIES THE AIRCRAFT CATEGORY (A) AREA, THE STRUCTURE HEIGHT DOES NOT IMPACT VFR TRAFFIC PATTERN OPERATIONS.

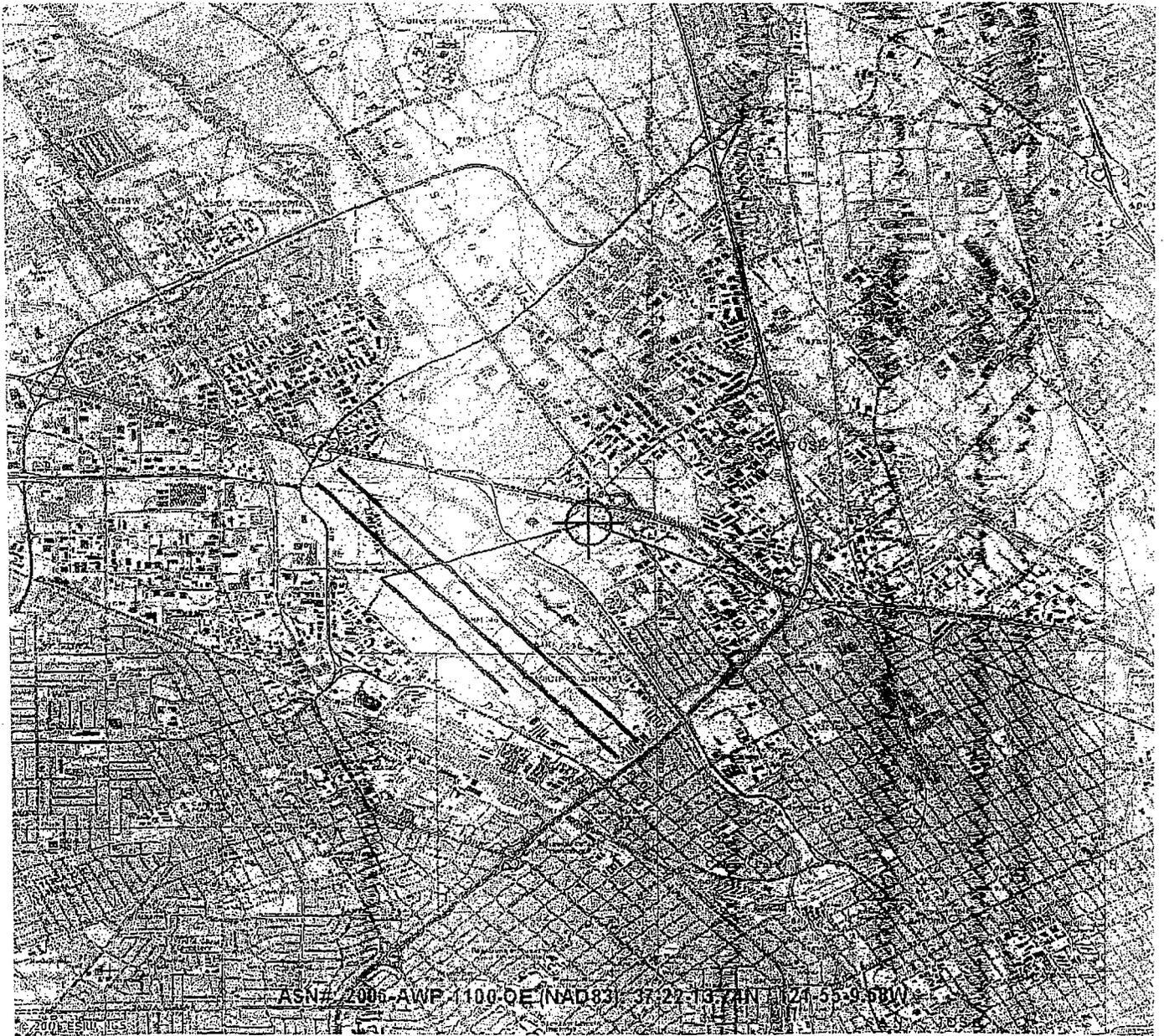
THIS MAXIMUM HEIGHT SHALL INCLUDE ALL ROOF-MOUNTED APPURTENANCES, INCLUDING BUT NOT LIMITED TO; OBSTRUCTION LIGHTING, ANTENNAS, SIGNS, PARAPETS, ELEVATOR EQUIPMENT, ETC.

UPON THE STRUCTURE REACHING ITS MAXIMUM HEIGHT, THE SPONSOR SHALL SUBMIT FAA FORM 7460-2 AS SUPPLEMENTAL INFORMATION WITH A 1A-ACCURACY AS-BUILT CERTIFIED SURVEY ATTACHED. THE SUPPLEMENTAL INFORMATION WILL BE USED FOR AERONAUTICAL CHARTING.

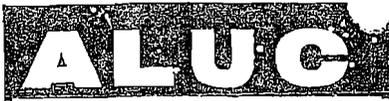
THE CUMULATIVE IMPACT OF THE STRUCTURE, WHEN COMBINED WITH OTHER PROPOSED OR EXISTING STRUCTURES AND TERRAIN, IS NOT CONSIDERED TO BE SIGNIFICANT AND WOULD HAVE NO GREATER EFFECT UPON THE SAFE AND EFFICIENT UTILIZATION OF THE NAVIGABLE AIRSPACE. THE AERONAUTICAL EFFECT IS KNOWN.

THEREFORE, IT IS DETERMINED THAT THE PROPOSED STRUCTURE AT THIS POINT WOULD NOT HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE SAFE AND EFFICIENT UTILIZATION OF THE NAVIGABLE AIRSPACE BY AIRCRAFT OR ON ANY AIR NAVIGATION FACILITY AND WOULD NOT BE A HAZARD TO AIR NAVIGATION.

Map for ASN 2006-AWP-1100-OE



ASN# 2006-AWP-1100-OE (NAD83) 37 27 13 ZAN 24 55 9 58W



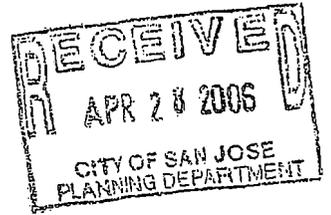
SANTA CLARA COUNTY

Airport Land Use Commissio

County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA 95110
(408) 299-5798 FAX (408) 288-9198

April 27, 2006

Allen Tai, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113



Re: City of San Jose No. GP06-T-01
General Plan Text Amendment request to revise text section of the North San Jose Development Policy to allow a change of maximum building height from 150 to 230 feet on a 6.1-acre site and amend the text of Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101 (APN 230-29-065)

Dear Allen:

Please find enclosed a copy of the agenda and staff recommendation for the above-cited project reviewed by the Santa Clara County Airport Land Use Commission (ALUC) on April 26, 2006 (ALUC File Number 8969-06R-03).

General Plan Text Amendment GP06-T-01 was determined to be inconsistent with ALUC policies, as defined in the *Land Use Plan for Areas Surrounding Santa Clara County Airports*, because the text amendment proposes allowing a maximum building height of 230 feet, which exceeds the ALUC height restriction of 206 feet for the subject site. It is the position of the ALUC that the Federal Aviation Administration (FAA) Part 77 Imaginary Surface height restrictions, adopted by the ALUC in its *Land Use Plan*, represent a reasonable consideration for public safety for which compliance should be required.

If you have any questions, please do not hesitate to contact me at (408) 299-5798.

Sincerely,

A handwritten signature in cursive script that reads 'Dana Peak'.

Dana Peak
ALUC Staff Coordinator

ITEM 6.b.

Maximum Allowable Building Height in Feet

	<u>Existing</u> Above Ground Level (AGL)	<u>Existing</u> Above Mean Sea Level (AMSL)	<u>Proposed</u> AGL with FAA No Hazard Clearance	<u>Proposed</u> AMSL with FAA No Hazard Clearance
General Plan	150	197	220	277
FAA	Part 77 As low as 159	Part 77 206	220	277
ALUC	As low as 159	206	No Change 159	No Change 206

Above Mean Sea Level (AMSL): The elevation (on the ground) or altitude (in the air) of any object, relative to the average sea level. AMSL is used in aviation; all heights are recorded and reported with respect to AMSL. Building height as defined AMSL incorporates distance from mean sea level to top of building.

Above Ground: Above natural or finished grade; varies relative to AMSL.

Avigation Easement: Airspace or an easement in such airspace above the surface of property where necessary to permit imposition upon such property of excessive noise, vibration, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value, due to the operation of aircraft to and from the airport.