

Attachment 15

Resolution Overriding Airport Land Use Commission Determination of Inconsistency

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADOPTING OVERRIDING FINDINGS
REGARDING SANTA CLARA COUNTY AIRPORT LAND
USE COMMISSION DETERMINATION OF
INCONSISTENCY FOR THE CITYPLACE PROJECT
LOCATED NORTH OF TASMAN DRIVE, EAST OF
GREAT AMERICA PARKWAY AND SAN TOMAS
AQUINO CREEK, WEST OF THE GUADALUPE RIVER,
AND SOUTH OF GREAT AMERICA WAY AND STATE
ROUTE 237, IN THE CITY OF SANTA CLARA**

SCH#2014072078

CEQ2014-01180 (EIR)

PLN2014-10554 (General Plan Amendment, Rezoning and Development Agreement)

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on May 18, 2015, pursuant to the provisions of Section 21670 et seq. of the California Public Utilities Code ("Section 21670"), the City referred the General Plan Amendment and Planned Development-Master Community Plan ("PD-MC") zoning for the CityPlace Project (PLN2014-10554) located north of Tasman Drive, east of Great America Parkway and San Tomas Aquino Creek, west of the Guadalupe River, and south of Great America Way and State Route 237 on properties (APNs: 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-01-102, 097-01-039 and 097-01-073) within the Mineta San Jose International Airport Influence Area ("AIA") to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's Comprehensive Land Use Plan ("CLUP");

WHEREAS, on June 24, 2015, the ALUC, acting pursuant to its authority under Section 21670 determined that the proposed General Plan Amendment and PD-MC zoning to allow residential development as part of the proposed CityPlace Project is inconsistent with ALUC Noise Policy

N-4, of the CLUP for Areas Surrounding Santa Clara County Airports, in that the CityPlace Project would locate residential development within the 65 dBA CNEL noise contour;

WHEREAS, a city may overrule a determination of the ALUC if it makes findings that the proposed project is consistent with the purposes of Section 21670 regarding the protection of public health, safety and welfare in areas surrounding airports and by providing the ALUC with a copy of the proposed decision and findings at least 45 days prior to the City's action to overrule the ALUC;

WHEREAS, on February 8, 2016, the City of Santa Clara provided the ALUC and the California Department of Transportation, Division of Aeronautics ("Division") with the proposed decision and findings in accordance with the 45 day period required under Section 21670;

WHEREAS, the Public Utilities Code provides that the ALUC and the Division shall respond to the referral of the findings of override within 30 days of receiving the proposed decision and findings;

WHEREAS, in the event that the ALUC or Division's comments are not available within this time limit, the City may act without them;

WHEREAS, on February 24, 2016, at a regularly scheduled meeting, the ALUC reviewed the City's proposed decision and findings to overrule the ALUC's determination of inconsistency with ALUC Noise Policy N-4 and directed County staff to forward comments of the ALUC to the City of Santa Clara;

WHEREAS, the City has obtained the meeting minutes from the February 24, 2016 containing ALUC comments, which are attached herein and incorporated hereto by this reference;

WHEREAS, the City received comments from the Division on March 7, 2016, regarding the City's proposed decision and findings to override the ALUC's determination of inconsistency with ALUC Noise Policy N-4, which are attached hereto and incorporated by this reference;

WHEREAS, the comments by the ALUC or Division are advisory to the City under State law and;

WHEREAS, the City Council shall include comments from the ALUC and the Division in the final record of any final decision to overrule the ALUC, which may only be adopted by a two-thirds vote of the Council.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City of Santa Clara hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That Public Utilities Code Section 21676 provides that a local governing body may overrule the Commission if it makes specific findings that the proposed action is consistent with the purposes of Public Utilities Code Section 21670. The City Council therefore finds the following:

A. The first purpose of Section 21670 is to provide for the orderly development of each public use airport in this State and the area surrounding these airports so as to promote the overall goals and objectives of California airport noise standards and to prevent the creation of new noise and safety problems. The second purpose of Section 21670 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 noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

B. With respect to safety, the subject property is not located within any of the Safety Zones for the Mineta San Jose International Airport, so none of the ALUC safety policies are applicable to the project. Moreover, the CityPlace Project will have no impact on Federal Aviation Administration Federal Aviation Regulations (FAA FAR) Part 77. The FAA FAR Part 77 Surface Map is a map used by the FAA and the ALUC to identify potential obstructions and hazards to aviation traffic. The Santa Clara County ALUC uses the map as a height restriction boundary for purposes of making consistency determinations with its CLUP. The CityPlace Project has a topography ranging from 21 feet to 65 feet above Mean Sea Level (MSL) with the lowest imaginary surface above the subject project area at a transitional 362 MSL surface of the FAA Part 77 Surfaces. According to the Project Description in the CityPlace Project Environmental Impact Report ("EIR") dated October 2015, the proposed building heights would not exceed 219 feet above MSL. As the maximum building height of the CityPlace Project would be 219 feet above MSL and highest elevation of the site is 65 MSL, there would be no conflict with the lowest imaginary surface of 362 feet MSL. Furthermore, an aviation easement shall be granted to the City of San Jose for any development proposed within the 65 dBA CNEL noise contour for aircraft operations. The aviation easement will set maximum elevation limits for proposed future development of the CityPlace Project in conformance with Part 77 Federal Aviation Regulations.

With respect to noise, the EIR, CEQA Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the CityPlace Project respond to ALUC concerns regarding residential development within the AIA, and promote the overall goals and objectives of the California Airport Noise Standards through the General Plan Environmental Safety Goals and Policies. Implementation of noise control measures and construction standards

will lessen noise impacts to residents. Prior to the issuance of building permits, detailed acoustical analyses shall be done as part of final design for the proposed residential structures. The project shall incorporate construction methods, sound attenuation features, and sound reducing barriers that reduce noise impacts in accordance with Section 21670 to meet the interior noise level of 45 dBA CNEL. Sound control treatments shall include mechanical ventilation for all units so that windows can be kept closed at the occupant's discretion to control noise, and special building construction techniques (such as sound-rated windows and building façade treatments) for all units. Future tenants and lessees of the residential component of the CityPlace Project shall be advised of the properties' location within the AIA, in compliance with State law (California Civil Code Section 4255).

In addition, the City recognizes that in a comment letter dated October 27, 2015 responding to the Draft EIR, Cary Greene of the Mineta San Jose International Airport noted that according to the most recent data, the Project site is not within the 65 dB CNEL impact area of Mineta San Jose International Airport. Moreover, a part of the site lies beyond the 60 dB CNEL impact area. This comment letter is attached hereto and incorporated by this reference.

Conservatively, the City finds that the CityPlace Project site partially lies within the 65 dBA CNEL Noise Contour for Mineta San Jose International Airport and includes residential development with associated outdoor activity areas. Nonetheless, mitigated interior noise levels would not exceed 45dBA CNEL, and any exposure to higher levels of outdoor noise would be temporary.

3. That the City of Santa Clara, based on the above findings, does hereby override the ALUC determination of inconsistency, as provided by laws of the State of California.

4. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 2016, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Exhibit "ALUC-Comments" (Comments from ALUC and California Department of Transportation, Division of Aeronautics)
2. Comment Letter on DEIR dated October 27, 2015, from Mineta San Jose International Airport

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