

County of Santa Clara
Airport Land Use Commission

Wednesday, January 23, 2008
Minutes

Regular Meeting

1. **Call to Order/ Roll Call.**

The regular meeting of the Airport Land Use Commission (ALUC) is called to order by Chairperson Sturdivant at 6:04 p.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose. A quorum is present.

Members Present:

E. Ronald Blake

Ralph Britton

Arthur Knopf

Jack Morton (Arrives at 6:30 p.m.)

Barbara Spector

Robert Sturdivant, Chairperson

Walter Windus

Ex-Officio Members Present:

Cary Greene, San Jose International Airport

Carl Honaker, County Airports

2. **Public Presentations**

There are no public presentations.

3. **Approve minutes of November 28, 2007.**

Commissioner Windus directs attention to page 2, Item No. 8, paragraph three, and requests the minutes be amended to read "...that the ALUC does not need a new Master Plan...".

Mark Connolly, Planner III, Department of Planning and Development, directs attention to page 2, Item No. 8, paragraph one, and requests the minutes further be amended to read "...that this item be continued until the application is deemed complete." Continuing, he directs attention to page 3, paragraph three, and requests the minutes be amended to read

"continue". Further, he directs attention to page 7, paragraph four, and requests the minutes be amended to reflect that "...the City of San Martin is under consideration of being incorporated...".

On motion of Commissioner Windus, seconded by Commissioner Blake, it is unanimously ordered on a vote of 6 to 0, with Commissioner Spector abstaining, that the minutes of November 28, 2007 be approved, as amended.

4. **Provide comments to be forwarded to the City of San Jose regarding the adequacy of the findings for a proposed override by the City regarding ALUC action on March 28, 2007 that found a Planned Development Rezoning application number (PDC06 -130) inconsistent with ALUC policies, as defined in the "Land Use Plan for Areas Surrounding Santa Clara County Airports".**

Mr. Connolly provides background information on a City of San Jose override of a rezoning action taken by the ALUC on March 28, 2007. He summarizes that prior to the rezoning the ALUC was referred a proposed general plan amendment for the site, which the ALUC found inconsistent due to penetration of Federal Aviation Administration (FAA) Federal Aviation Regulations (FAR) Part 77 surfaces. He advises the Commission that because of this ruling, the proposed planned development rezoning, which would have conformed to the proposed general plan amendment and thus violated height restrictions, was also found to be inconsistent.

He reminds the Commission that rezonings and general plan amendments are mandatory referrals to the ALUC, and he explains that while the ALUC received and provided comments to the City of San Jose regarding the general plan override, the Commission may also provide comments to the City concerning the rezoning override. Further, he clarifies that the purpose of the override is not to make a consistency determination with the Comprehensive Land Use Plan (CLUP), as the ALUC has already found the plan inconsistent. Further, he states that the ALUC can now forward to the City an affirmation or non-affirmation of the City having properly made findings.

He provides a description of the project, as originally proposed, with a density of 424 units. Additionally, he advises the Commission of a new site plan, generated from ALUC action and prepared through applicant and City collaboration, and he advises the Commission that while the new project is located on the same site at the same height, it now constitutes 600 units with towers aligned parallel rather than perpendicular to Airport Parkway. Further, he informs the Commission that an FAA Flight Study granting the amended project a "No Hazard" designation was completed in January. He indicates that the City has subsequently referred the rezoning override to the Commission.

Chairperson Sturdivant and Ex-Officio (EO) Commissioner Cary Greene, Planner, San Jose International Airport, clarify that the new development is 220 feet Above Ground Level (AGL), 263 feet above Mean Sea Level (MSL), and was granted a No Hazard determination based on an exception to exceed the FAR 208 MSL limit. Mr. Connolly adds that the proximity of the project to the sea-line may have contributed to the No Hazard determination, as well. Chairperson Sturdivant expresses disagreement with City assertion that the ALUC determination did not cite any specific ALUC policy, and he notes that the Commission referenced the County-wide Comprehensive Land Use Plan (CLUP) in issuing its determination.

Commissioner Spector inquires whether there are limitations on the FAA issuance of No Hazard designations, and EO Commissioner Greene replies that while the FAA has no jurisdiction over the project, it is required that it be able to review the proposal, that it may find that the obstructions cause no hazard, that it may include stipulations, and that it is accompanied by an expiration date on project construction. Commissioner Spector further inquires whether the Commission is to adopt a resolution from the City overriding Commission action, and EO Commissioner Greene replies that in order for the City to approve the rezoning it must first override the ALUC determination by a two-thirds vote with mandatory findings supporting the override. He explains that the City has agendized a possible overriding of an ALUC action and provided the Commission with the necessary notification to allow an opportunity to provide comments.

Lizanne Reynolds, County Counsel, specifies that the City is claiming in its override that despite the ALUC finding of the project as being inconsistent with the CLUP, the project none-the-less satisfies policies guiding ALUC law. She adds that the City is citing the FAA determination as evidence that, despite the Commission finding, the project poses no hazard and complies with safety and compatible land use policies. In response to an inquiry by Commissioner Spector, Ms Reynolds states that the Commission can provide comments on the City resolution to overrule the ALUC decision. Commissioner Spector points out that the Commission has continued to judge projects as to their constancy with FAR Part 77 guidelines while the FAA has continued to grant exceptions. Chairperson Sturdivant emphasizes the importance of Part 77 regulations for safety, and Commissioner Windus notes that the County-wide CLUP applies to San Jose International Airport (SJC). Mr. Connolly indicates that the penetration into Part 77 boundaries is approximately 50 feet.

Commissioner Windus expresses concern regarding the protrusion of the buildings into airspace used by pilots to circle before landing and which may be protected by airport and Terminal Instrument Procedures specific minimum footages, and he points out the importance of providing a buffer to pilots who cannot hold their altitude. In response to an inquiry by Commissioner Britton, Chairperson Windus states that the project does not intersect with 65 or 55 decibel barriers.

Chairperson Sturdivant suggests that comments from the Commission to the City include a description of the current project, a reaffirmation that while adherence to Part 77 is not an adopted ALUC policy that the ALUC believes that FAR Part 77 restrictions are a valid basis for buildings not being allowed beyond the restrictions, and that the Commission takes no position on this issue and acknowledges that the FAA has made a No Hazard determination. Commissioner Britton notes that while the project could impact a plane circling to land, it does not obstruct the approach path or Instrument Landing System (ILS) available at both ends of the runway. Chairperson Sturdivant adds that the issue will need to be addressed in a plan specific to San Jose International Airport (SJC). Commissioner Blake continues that the Commission precedent is to base decisions of plan consistency or inconsistency on Part 77 Surfaces and that the Commission should judge the current project

by the same standards.

Commissioner Spector expresses the opinion that the City and developer are interested in construction and the ALUC is focused on the safety of the project. Commissioner Knopf points out that the FAA has made a determination and Commission opposition to the FAA determination may be moot.

(Commissioner Morton arrives at 6:30 p.m.)

Chairperson Sturdivant summarizes that the comments to the City include that the Commission still believes that the Part 77 restrictions are a valid reason for recommending buildings not be allowed over certain heights.

On motion of Commissioner Windus, seconded by Commissioner Britton, it is unanimously ordered that Office of Planning Staff be requested to forward to the City of San Jose ALUC and Staff comments pertaining to the adequacy of the findings for a proposed override by the City.

5. **Provide recommendations relating to a Rezoning request from the City of San Jose to modify the development standards of a 1993 Industrial Park (IP) Planned Development (PD) rezoning to allow office/research and development uses and to change the height and setbacks to conform to the IP standards. The site is located at the northwest corner of Orchard Parkway and Atmel Way (City of San Jose File No. PDC07 - 091, APN 101 -02 -010).**

Mr. Connolly reports that the item before the Commission relates to a PD modification to a director initiated rezoning request. He explains that the City of San Jose has no vehicle in place by which to amend PDs and instead writes new PD rezoning requests to modify development standards. He reminds the Commission that as a rezoning action the project is a mandatory referral to the Commission, and he continues by providing an overview of the IP PD. He explains that the modifications will move the building closer to the street for increased visibility, allow for more office space and increased research and development

utility, and change in height and conform to the IP standards of the City. Additionally, he discusses the location of the project and its relation to SJC and safety and sound zones. He summarizes that the PD is outside the SJC Safety Zone, outside the 65 Community Noise Equivalent Level (CNEL) boundary, and at 180 feet MSL is under the 208 MSL regulation. He concludes that Staff found the PD consistent and that the project is currently before the Commission as a mandatory referral.

Ms Reynolds states that the Commission may want to verify that an aviation easement has been dedicated. She comments that building permits may not have been issued and emphasizes that the ALUC will want to ensure that the easement was granted or carry over the dedication of the aviation easement as condition of the current rezoning. EO Commissioner Greene states that a rezoning and a specific development plan have previously been approved and that the presentation provided is for informational purposes. He advises the Commission that the development plan calls for six story buildings, far below height restrictions, and that a condition for an aviation easement has already been approved.

Mr. Connolly reiterates that the City of San Jose approved the PD on January 8, 2008, and he states that the ALUC did not meet within the 60-day ALUC review period due to Commission agendaing and meeting scheduling limitations. He adds that today is the last day of a 15-day appeal period and that Staff can forward a memorandum to the City expressing the findings of the ALUC if it finds the PD inconsistent. Commissioner Blake states that as ALUC action is beyond the 60-day window it may be irrelevant for the Commission to act. Commissioner Windus expresses support for ALUC action, even if after the deadline.

On motion of Commissioner Windus, seconded by Commissioner Blake, it is unanimously ordered that the ALUC finds the rezoning request consistent with the ALUC height, noise and safety policies for San Jose International Airport, as defined in the Santa Clara County Comprehensive Land Use Plan.

6. **Consider verbal report on City of San Jose General Plan Amendment to allow solar panels on building roofs.**

Mr. Connolly provides information pertaining to a director initiated general plan amendment as a result of green building initiatives, such as solar panels, in the City of San Jose. He notes that the amendment represents a mandatory referral to the Commission as solar arrays could potentially extend building height past Part 77 restrictions. He recites that the ALUC received information relating to the project on November 4, 2007, was unable to gather sufficient information to agendize a presentation to the Commission by the deadline, and requested additional time from the City. Continuing, he reports that the City continued consideration so that Planning Department Staff could provide comments.

He recounts that Staff contacted ALUC Chairperson Sturdivant and Vice Chairperson Windus who recommended Staff prepare a letter regarding Commission concerns to comply with the deadline of the City. Mr. Connolly summarizes that the memorandum expressed concern regarding the potential of the solar arrays to penetrate Part 77 surfaces. He notes that the City took ALUC concerns into consideration and at a meeting on January 8, 2008 approved a general application text amendment to limit net building and tower heights to the general plan maximum. Further, he cites an excerpt from the letter included to address ALUC concerns, requiring proposed structures to have applications first reviewed by federal, State, and local jurisdictions, including referrals to the ALUC, as necessary. He reiterates that the Commission need not take action as the City has already approved the policy. Continuing, he inquires how issues which necessitate ALUC response and cannot be agendized by the deadline should be treated in the future.

Commissioner Britton inquires whether the general plan for the City of San Jose includes provisions for aircraft with one engine inoperative (OEI), and Mr. Connolly responds that the City has not yet adopted its OEI policy. Commissioners discuss when the policy may be adopted, and Mr. Connolly confirms that applications subsequent to the OEI adoption by the City would need to remain consistent with the OEI. Commissioner Britton adds that after City adoption, ALUC CLUPs could adopt similar regulations for consistency between City and ALUC restrictions. Commissioner Morton clarifies that the memorandum was in

part to preserve ALUC jurisdiction, and he expresses the opinion that in this it appears to have been effective. Mr. Connolly states that the memorandum allowed for comments to be provided on behalf of the Commission and helped protect airspace necessary for air safety. Additionally, Ms Reynolds comments that the City Plan only incorporates mandatory referrals to the ALUC, and she notes that development applications which are consistent with zoning and general plans for their areas may not be referred to the ALUC.

Commissioner Spector expresses the opinion that rather than choosing not to act, it is preferable that the Chairperson and Vice Chairperson provide comments to Staff for submission to cites or request that a special meeting be held. She communicates that conflicts between green initiatives and land use policies will become increasingly prevalent. Commissioner Windus inquires as to the geographical area encompassing the "downtown corridor area" referenced in the Plan, and he states that this area has different guidelines and could be properly referenced in a CLUP for SJC.

On motion of Commissioner Morton, seconded by Commissioner Spector, it is unanimously ordered that the Chairperson and Vice Chairperson, assuming that there is insufficient time to agendize a presentation to the Commission as a whole, be authorized to provide input to Staff for comments to be forwarded to the relevant party on behalf of the Commission, and that the Chairperson and Vice Chairperson be granted authority to convene a Special Meeting as necessary and as approved by the Office of the Clerk of the Board.

7. **Discuss South County Airport Comprehensive Land Use Plan (CLUP).**

Mr. Connolly states that airport specific land use plans are being developed for each County airport, and he reminds the Commission of CLUPs previously presented to the Commission. He clarifies that presentations have been provided since CLUPs can be amended no more than once per year, and he remarks that after input is received the Commission can begin the lengthy process of involving relevant jurisdictions in reconciling a policy amenable to stakeholders. Continuing, he reports that the draft CLUP includes color geographic information system (GIS) diagrams as prepared by Commissioner Windus and converted to GIS by Staff. Mr. Connolly directs attention to various diagrams relating

to the draft CLUP, including maps of CNEL levels and Part 77 surfaces, and he notes that flight traffic is located exclusively to the east of Interstate 101.

He points out that the policy is somewhat similar to the CLUPs for Reid-Hillview Airport (RHV) and Palo Alto Airport (PAO) in an effort to keep policies as consistent as possible. Additionally, he advises the Commission that as with RHV, County zoning was combined with the airport impact area (AIA). He comments that the report is intended as an introduction of an item to be agendaized on a future agenda to consider adoption of the CLUPs. Further, he states that the County will initiate discussion with the City of Palo Alto regarding the proposed policies. Chairperson Sturdivant mentions that the unincorporated area of San Martin has a Planning Advisory Committee with which the County may want to consult regarding the South County Airport (E16) CLUP, and EO Commissioner Honaker confirms that he attends the meetings and has updated the Committee on CLUP progress. EO Commissioner Honaker expresses his positive impressions of the CLUP, and he explains that E16 requests pilots keep right of the runway because a majority of the community is located to the left.

Commissioner Windus directs attention to a placeholder for numbers of aviation based aircraft at E16, an AIA map where the bottom left-hand corner will be shortened, the western AIA boundary which is now based on Santa Theresa Boulevard, and various parcel boundaries. He notes that this CLUP deviates from boundaries based on roadways, railroads and rivers due to the agricultural surroundings lending more readily to delineation by parcel. Mr. Connolly adds that the E16 CLUP amendment will reduce AIA, while the RHV amendment increased AIA. Chairperson Sturdivant and Commissioners Blake and Windus discuss Masten Avenue and Monterey Road as alternative boundaries for AIA, and discussion ensues pertaining to location of San Martin residents, flight paths exiting the valley, busy flight corridors, and low flight ceilings.

In response to an inquiry by Commissioner Morton, Mr. Connolly replies that proposed CLUPs are being introduced to the Commission before presentation to City of Palo Alto. Mr. Connolly agrees to provide Commissioner Morton with a copy of the proposed PAO

CLUP, and Commissioners discuss when the Commission will meet with officials from the City of Palo Alto. In response to an inquiry by Chairperson Sturdivant, Mr. Connolly states that Staff have informally discussed amending the PAO CLUP with the San Mateo County ALUC and City of East Palo Alto. Further, he confirms that Staff will provide presentations and initiate formal discussion with the jurisdictions in the future. Commissioner Windus adds that the E16 AIA may encompass areas of the Cities of Morgan Hill and Gilroy, and he suggests that the Commission discuss the proposed changes with those cities, as well. Commissioner Britton recommends the proposed PAO CLUP be provided to City of Palo Alto planning officials, as well.

Commissioner Windus indicates that the proposed CLUPs should be distributed to appropriate public agencies, and Chairperson Sturdivant notes that the draft CLUP should be forwarded with a cover letter explaining the approval process. Mr. Connolly expresses agreement with the preparation of a cover letter, and Commissioner Britton commends Commissioner Windus for his efforts in creating the draft CLUPs. In response to an inquiry by Commissioner Morton, Mr. Connolly states that Staff may meet with the San Mateo County ALUC in a separate meeting as their Commission may meet less frequently than the Santa Clara County ALUC. Commissioner Windus emphasizes that notifying the San Mateo County ALUC will provide a courtesy as safety zones, noise contours, and Part 77 surfaces in the PAO draft CLUP extend into San Mateo County territory.

In response to Commissioner Morton, Mr. Connolly states that the County will hold public hearings as necessary, and Commissioner Windus notes that in the past these hearings have not necessarily been well attended by the public. Mr. Connolly states that consideration of the CLUPs may be agendaized for March for receipt of formal comments.

8. **Accept staff verbal report relating to minor project referrals.**

There is no report.

9. **Accept reports from Ex-Officio Commissioners:**

a. **Airport Planner, San Jose International Airport**

EO Commissioner Greene advises the Commission that a developer, which had been granted a No Hazard determination by the FAA, subsequently changed its building blueprints and was again granted a No Hazard determination by the FAA.

Additionally, EO Commissioner Greene reports that miscellaneous projects which have been previously presented to the Commission appear to be on hold. In response to an inquiry by Chairperson Sturdivant, EO Commissioner Greene states that a project located near South Market Street has been under consideration by the FAA for some time. Further, he reminds the Commission that City of San Jose Staff are somewhat concerned with the proposed project as it penetrates OEI surfaces, and discussion ensues pertaining to City policies.

EO Commissioner Greene reports that a utility project is underway near the Guadalupe Gardens area of the City of San Jose which will benefit aircraft safety and regional aesthetic by removing power lines and placing them underground within the next one to two years.

Chairperson Sturdivant requests that future tables of FAA Obstruction Evaluation Actions include an additional column noting action taken by the Commission, and Commissioner Windus requests clarification regarding the long term development plan for Guadalupe Gardens. EO Commissioner Greene states that Guadalupe Gardens is served by an open space master plan, has had development somewhat restricted by the FAA, and is of interest to the City for the development of passive public uses.

b. **Director of County Airports**

EO Commissioner Honaker communicates that the Roads and Airports Department is working with the City of San Jose to insulate homes near RHV, and he informs the Commission that the Airport Improvement Program (AIP) is being considered by the United States Congress. He adds that a resolution may be written to include

authorization of the FAA to submit grants to qualifying projects or, alternatively, that a four year appropriations bill may be authorized. He notes that this impacts the County by halting an environmental study of possible effects of E16 runway extension. Discussion ensues, and EO Commissioner Honaker clarifies that the FAA will not provide similar grant funding for studies at PAO or RHV.

Commissioners and Staff discuss construction at PAO, and EO Commissioner Honaker advises the Commission that Automated Surface Observing Systems (ASOS) units are planned for installation at PAO and E16.

Chairperson Sturdivant initiates discussion regarding the filing of Conflict of Interest forms, and Ms Reynolds recites that the forms must be filed annually and directs attention to a website with additional information. Commissioner discuss mandatory meetings and the similarities in the successive forms filed.

10. **Accept Chairperson's verbal report.**

There is no report.

11. **Elect Chairperson and Vice-Chairperson for Calendar Year 2008.**

Chairperson Sturdivant states that his experience as Chairperson has been positive and thanks Commissioners and Staff. He details ALUC successes toward amending CLUP documents and expresses the opinion that in the coming year the ALUC may adopt the CLUPs developed for individual airports.

On motion of Sturdivant, seconded by Commissioner Spector, it is unanimously ordered that Commissioner Windus be elected as Chairperson for Calendar Year 2008.

On motion of Commissioner Sturdivant, seconded by Commissioner Britton, it is unanimously ordered that Commissioner Knopf be elected as Vice-Chairperson for Calendar Year 2008.

12. **Accept correspondence.**

Ms Reynolds advises the Commission that private-use helipad construction, expansion or modification may not explicitly fall within ALUC purview. She explains that the relevant regulatory chapter is not within the ALUC section of the Public Utilities Code. Further, she states that hospitals have referred their helipad plans to the Commission, although it could be argued that doing so may not be mandatory.

Chairperson Windus comments that while privately held facilities do not necessarily have a FAA master plan template, they have a master plan outlining design, use and location of the facility. Further, he notes that this document may include many elements found in an Airport Layout Plan (ALP) and meet general requirements. Ms Reynolds specifies that how broadly or narrowly the ALUC review of master plan documents is interpreted may provide the basis of whether, if found incompatible, the ALUC could compel an override of private helipad plans. In response to Commissioner Britton, Ms Reynolds responds that an addition to the County Ordinance may be unnecessary so long as private facilities voluntarily refer helipad plans to the ALUC. Commissioners discuss helipads within the County.

Chairperson Windus and EO Commissioner Honaker indicate that concern with helipads would focus on conflicting airspace. Commissioners discuss a helipad at Stanford Medical Center, and EO Commissioner Honaker notes that helipads are licensed by the State. He adds that the State has contacted him previously to consult on new helipad development, and Ms Reynolds and EO Commissioner Honaker discuss notifying the State Division of Aeronautics to request a review of this section of the Public Utility Code.

13. **Discuss options relating to new commission members attending mandatory orientation, including scheduling of orientation, possible participation of chairpersons and County staff, and any other issues of concern.**

Brief discussion ensues regarding the orientation. In response to an inquiry by Ms Reynolds, the Deputy Clerk advises the Commission that the orientation is mandated by Board Policy rather than County Ordinance.

14. **Announcements:**

- a. **Boards and Commissions agendas and minutes are available on the County of Santa Clara website at <http://www.sccgov.org/portal/site/bnc>**

There is no report.

15. **Adjournment.**

On motion of Commissioner Morton, seconded by Commissioner Spector, it is unanimously ordered that the meeting be adjourned at 7:38 p.m. to the next workshop meeting on Wednesday, February 27, 2008 at 6:00 p.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose.

Respectfully submitted,

Roy Stone
Deputy Clerk