



## Legislation Text

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**File #: 22-722, Version: 1**

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Resolution overruling the San Mateo City / County Association of Governments (C/CAG) Airport Land Use Commission determination of inconsistency with respect to Noise Policies for the proposed residential portion of a redevelopment project located at 180 El Camino Real (“Project”) by adopting specific findings that the project is consistent with the override provisions contained in Division 9, Part 1, Chapter 4, Article 3.5 of the Public Utilities Code.

WHEREAS, Steelwave LLC has proposed construction of a high-density mixed-use development, consisting of 184 residential units, approximately 750,000 square feet of research and development spread between three buildings, ground-floor commercial uses, open space amenities, and an associated parking structure at 180-188 El Camino Real and 415 South Spruce Avenue, APN 014-183-110 (collectively referred to as “180 ECR Project Site”) in the City; and

WHEREAS, the applicant seeks approval of a Conditional Use Permit (UP21-0013), Design Review (DR21-0045), Transportation Demand Management Plan (TDM21-0012), and Tentative Parcel Map (PM21-0003) for the Project; and

WHEREAS, the 180 El Camino Real Project is located within Airport Influence Area B of the San Francisco International Airport (SFO), the area subject to formal C/CAG Airport Land Use Commission (ALUC) Review; and

WHEREAS, on May 12, 2022, pursuant to the provisions of Section 21670 et seq. of the Public Utilities Code (“Section 21670”) the City referred the proposed development project and associated General Plan and Zoning Ordinance amendments to the C/CAG ALUC of San Mateo County for a determination of consistency with the ALUC’s Comprehensive Airport Land Use Compatibility Plan (ALUCP) for the San Francisco International Airport; and

WHEREAS, on July 14, 2022, the ALUC, acting pursuant to its authority under Section 21670 determined that the residential portion of the 180 El Camino Real project is inconsistent with SFO ALUCP Policy NP-1, Noise Compatibility Zones, and Table IV-1, Noise/Land Use Compatibility Criteria, the project site is located almost entirely within the 70-75 dB CNEL noise contour, and multi-family residential use is identified as “Not Compatible” within that contour, unless at the time of adoption of the SFO ALUCP (2012) the site had been

zoned exclusively for residential use, which is not the case with the Project site; and

WHEREAS, as a final review authority, the City Council, may, after a public hearing, choose to overrule the ALUC determination by a two-thirds vote of the City Council, if the City of South San Francisco makes specific findings that the proposed project is consistent with the purposes of the Public Utilities Code Section 21670 regarding the protection of public health, safety and welfare in the areas surrounding airports and by providing the C/CAG ALUC and the Caltrans Division of Aeronautics (“Division”) with notice of the City’s intent to consider overruling the C/CAG ALUC determination along with supportive findings at least 45 days prior to the City’s action to overrule the ALUC; and

WHEREAS, on July 27, 2022, the City Council adopted a resolution making draft findings and declaring an intent to consider overruling the C/CAG ALUC determination that the residential portion of the 180 El Camino Real project is inconsistent with respect to noise policies and directed staff to transmit the required notice to the ALUC and the Caltrans Division of Aeronautics, and

WHEREAS, the Public Utilities Code provides that the City must provide the notice of intent and draft findings to the ALUC and the Caltrans Division of Aeronautics at least forty-five (45) days prior to the decision to overrule the Commission; and

WHEREAS, on July 29, 2022, City staff provided a notice and associated draft findings to the ALUC and the Caltrans Division of Aeronautics declaring the City’s intent to consider overruling the C/CAG ALUC determination, and

WHEREAS, the City Council considered the override and made its final decision on September 14, 2022, which is more than forty-five (45) days after July 29, 2022 the date upon which the City transmitted its notice of intent to the ALUC and the Caltrans Division of Aeronautics; and

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; and

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

WHEREAS, the City Council is required to 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 City Council; and

WHEREAS, the City has received comments from the ALUC and the Division and those comments are attached to this resolution as part of the City’s final decision.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of South San Francisco hereby finds as follows:

## **SECTION 1**

## **FINDINGS**

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. That the Public Utilities Code Sections 21676 and 21676.5 provide that a local governing body may overrule the Airport Land Use 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 Policies**, the majority of the proposed Project site is located within Safety Zone 4, the Outer Approach / Departure Zone. Within Safety Zone 4, residential use is not restricted. Hazardous uses, such as biosafety level 2 uses (which encompasses the life science uses proposed on the project site) are determined to be “not incompatible” but are classified as uses that should be “avoided unless no feasible alternative is available.” In addition, the safety compatibility criteria state that where such a use is allowed, habitable structures need to be provided with at least 50% more exits than required by codes.

The Biosafety Levels used in the ALUCP are derived from guidance from the Center for Disease Control, Biosafety in Microbiological and Biomedical Laboratories (SFO ALUCP at IV-33), which also explains that Level 2 involves agents “that are already present in the community” and that with “good microbiological techniques, these agents can be used safely.” Because Level 2 does not authorize respiratory or aerosolized agents, it does not present a materially greater risk to public safety than Level 1 activities.

All uses proposing hazardous materials use are reviewed by the City of South San Francisco Fire Department (SSFFD) and Building Division to ensure hazardous materials requirements are met prior to construction, including required separation between hazardous materials and sensitive land uses and proper hazardous materials storage facilities. Any businesses that generate or use hazardous materials within the

Planning Area would also be subject to existing hazardous materials regulations such as those implemented by San Mateo Environmental Health Services, which is the local Certified Unified Program Agency (CUPA). The CUPA and SSFFD also conduct inspections for fire safety and hazardous materials management of businesses and residential dwellings. Businesses storing or handling hazardous materials over threshold quantities are required to submit Hazardous Materials Business Plans (HMBP) pursuant to federal, State, and local regulations. These HMBPs must include measures for safe storage, use, and handling of hazardous materials, along with a contingency plan that describes the facility's response procedures in the event of a hazardous materials release.

Per ALUCP requirements, any structure within the project that is located within Safety Zone 4 and that contains a use classified as Biosafety Level 2 will be required to provide at least 50 percent more exits than required by applicable codes.

No feasible alternative for the proposed inclusion of a biosafety level 2 use is available on this site because the majority of life science users blend Biosafety Levels 1 and 2 in facilities, making it too difficult for a landowner to compete for laboratory tenants if a facility is restricted to Biosafety Level 1. The applicant has represented that in order to make the project commercially feasible, Biosafety Level 2 is necessary.

- c. With respect to the **Airspace Protection Policies**, per the ALUCP, airspace protection policies are established with a two-fold purpose: 1) To protect the public health, safety, and welfare by minimizing the public's exposure to potential safety hazards that could be created through the construction of tall structures, and, 2) To protect the public interest in providing for the orderly development of SFO by ensuring that new development in the Airport environs avoids compromising the airspace in the Airport vicinity. This avoids the degradation in the safety, utility, efficiency, and air service capability of the Airport that could be caused by the attendant need to raise visibility minimums, increase minimum rates of climb, or cancel, restrict, or redesign flight procedures.

The proposed Project site includes five buildings (three life science buildings, one multifamily residential building and one parking structure), with the maximum height of the tallest building on the site at approximately 160 feet above Mean Sea Level (MSL). The proposed Project site is located within an area that requires filing FAA Form 7460-1, Notice of Proposed Construction or Alteration, for structures exceeding 30 feet in height. The project will include a Condition of Approval requiring that the applicant demonstrate compliance with this FAA requirement, prior to obtaining building permits. The Project site is also located within the Part 77 airspace protection surfaces for SFO. The applicant has submitted a detailed airspace analysis completed by Williams Aviation Consultants (Exhibit A) which concludes that the Project will not penetrate the Part 77 Imaginary Surface. The critical aeronautical surfaces above the Project Site are at an elevation of between approximately 159 and 168 feet above MSL. Maximum structure heights would be approximately 160 feet above MSL. A structure built at a maximum of 160 feet above MSL would be below the critical aeronautical surface height established. Based on the height being close to the maximum allowable, the applicant will document that all structures, including appurtenances, will be constructed below the heights shown on the SFO critical aeronautical surfaces map prior to issuance of any project building permits. Therefore, the proposed Project would be consistent with the airspace policies as established in the adopted 2012 SFO ALUCP.

Per ALUCP Policy A4, proposed land uses with characteristics that may cause visual, electronic, or wildlife hazards, particularly bird strike hazards, to aircraft taking off or landing at the Airport or in flight are incompatible in Area B of the Airport Influence Area. The South San Francisco Zoning Ordinance (Section 20.300.010) contains performance standards to ensure that all development protects the community from nuisances, hazards and objectionable conditions, including those which could be aircraft hazards, including light, glare, air contaminants, or electromagnetic interference. As proposed, the 180 El Camino Real project is consistent with the performance standards contained in the Zoning Ordinance and would not create an aircraft hazard.

- d. With respect to **Noise Policies**, ALUCP Policy NP-1 Noise Compatibility Zones identifies the noise compatibility zones for the purposes of the ALUCP. As depicted the majority of the project site, including the multi-family residential building, is located within the 70-75 dB CNEL contour. ALUCP Policy NP-2 stipulates that noise/land use compatibility shall be determined according to the criteria contained in ALUCP Table IV-1 which lists various land use types and whether the use is

“compatible”, “conditionally compatible”, or “not compatible” within a given noise contour range. Life science uses are not specifically listed in Table IV-1, but it is considered comparable to “Commercial Office, Business and Professional Uses”, which is identified in Table IV-1 as “compatible” within the 70-75 dB CNEL contour without restrictions. Multi-family residential uses are identified as “not compatible” within the 70-75 dB CNEL contour.

An ALUC Environmental Noise Analysis prepared by Salter, dated February 28, 2022 (Exhibit B), indicates that recent airport noise patterns are less than anticipated in the ALUCP, and that the Project site is currently less impacted by airport noise than at the time the ALUCP was adopted. The Noise Analysis also illustrates that implementation of noise control measures and construction standards will lessen noise impacts to residents. Prior to issuance of building permits, detailed acoustical analyses shall be completed as part of the 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, State Building Code, and General Plan requirements to meet the interior noise levels of 45 dBA CNEL. Sound control treatments shall include mechanical ventilation for all units so that windows can be kept closed at the resident’s discretion to control noise, and specialized building construction techniques (such as sound-rated windows and building façade treatments) for all units. The Project is also required to include real estate disclosures in residential leases, disclosing the presence of an airport within two miles of the property, per Section 11010 of the Business and Professions Code.

- e. As illustrated by the above discussion, approval of the proposed Project as configured would provide for orderly development adjacent to the airport and promote the overall goals and objectives of the California airport noise standards and prevent the creation of new noise and safety problems because the proposed Project provides much needed housing near transit on an underutilized site, while also utilizing advanced construction techniques to minimize any noise impacts to residents; because there is no feasible alternative for the proposed inclusion of a biosafety level 2 use within the portion of the site that is located with Safety Zone 4, and all uses storing or handling hazardous materials are required to comply with federal, State, and local regulations that ensure safe storage, use, and handling of hazardous materials safe on this site. Furthermore, subject to documentation that all structures, including appurtenances, will be constructed below the heights shown on the SFO critical aeronautical surfaces map prior to issuance of any project building permits, approval of the proposed Project does not create any aircraft hazards.
3. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of South San Francisco, 315 Maple Avenue, South San Francisco, CA 94080, and in the custody of the Chief Planner, Tony Rozzi.

## **SECTION 2**                      **DETERMINATION**

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of South San Francisco hereby makes the findings contained in this Resolution and overrules the San Mateo City / County Association of Governments (C/CAG) Airport Land Use Commission determination of inconsistency with respect to Noise Policies for the residential portion of the 180 El Camino Real (“Project”) in accordance with its authority pursuant to the local agency override process provided for in Division 9, Part 1, Chapter 4, Article 3.5 of the

Public Utilities Code. In doing so, the City Council hereby specifically finds that approval of the Project is consistent with the purposes of Article 3.5 of the Public Utilities Code as stated in Section 21670 of the Public Utilities Code.

BE IT FURTHER RESOLVED that the resolution shall become effective immediately upon its passage and adoption.