

ITEM #333
(R-2016-590) 4/26

RESOLUTION NUMBER R- 310406

DATE OF FINAL PASSAGE APR 26 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO PROPOSING TO OVERRULE THE AIRPORT LAND USE COMMISSION'S SAN DIEGO REGIONAL AIRPORT AUTHORITY'S DETERMINATION THAT THE PROPOSED CHICK-FIL-A RESTAURANT IS INCONSISTENT WITH THE AIRPORT LAND USE COMPATIBILITY PLAN FOR MCAS MIRAMAR.

WHEREAS, Chick-fil-A is proposing to construct a new 2,892-square-foot restaurant on a vacant 1.12-acre property located at 9370 Scranton Road within the Mira Mesa Community Planning area; and

WHEREAS, because of the property's location within the Airport Influence Area of MCAS Miramar, Chick-fil-A must obtain a consistency determination from the San Diego Regional Airport Authority (SDCRAA); and

WHEREAS, on September 17, 2015, the SDCRAA determined that the proposed Chick-fil-A restaurant was inconsistent with the MCAS Miramar Airport Land Use Compatibility Plan (ALUCP); and

WHEREAS, the SDCRAA's inconsistency determination was based primarily on the fact that the property is located within Accident Potential Zone 2, where eating and drinking establishments are prohibited by the ALUCP; and

WHEREAS, pursuant to San Diego Municipal Code 132.1555, an applicant may request a decision from the City Council to overrule a determination of inconsistency made by the SDCRAA; and

WHEREAS, on December 24, 2015, Chick-fil-A requested an overrule by the City Council of SDCRAA's inconsistency determination; and

WHEREAS, the first hearing was heard before the City Council on April 26, 2016; and

WHEREAS, under Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, under the San Diego Municipal Code section 132.1555, a two-thirds vote of the Council is required for passage of this resolution; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it adopts the following findings:

1. The Proposed Development Will Not Be Detrimental to the Public Health, Safety and Welfare.

First, in or about August, 2015, the Applicant submitted the required form 7460-1 to the Federal Aviation Administration (“FAA”) for a determination of the Project’s potential to obstruct or become a hazard to air navigation. On September 14, 2015, the FAA determined, in its “Determination of No Hazard to Air Navigation,” that the development will not expose the public to additional hazards from overflight of aircraft and air navigation in general. The ALUC further determined in its September 17th findings that the Project will not have an adverse effect on, or constitute an obstruction to, air navigation, because the applicant has certified to the FAA that the Project is located within an urbanized area and is shielded by existing structures and natural terrain. Moreover, the Project is primarily a drive through facility and limits the number of inside seats to 42, thus answering the ALUC’s concern by minimizing the total number of persons on the 1.12 acre site at any one time. The proposed development is located within the 60-65 CNEL noise contour. The ALUCP identifies commercial used located within the 60-65 dB

CNEL noise contour as compatible with airport uses. The Proposed Development Will Minimize the Public's Exposure to Excessive Noise and Safety Hazards to the Extent Feasible.

The ALUC has already determined in its findings of inconsistency that although the Project is located within the 60-65 CNEL noise contour, "the ALUCP identifies commercial uses located within the 60-65 dB CNEL noise contour as compatible with airport uses." Thus, there is no question in this case of excessive noise impacts from overflights. Moreover, the public will not be exposed to excessive safety hazards, in that the Project minimizes the number of persons occupying the APZ II zone at any one time, and, as has already been determined, meets all federal standards regarding obstructions and hazards to air navigation.

3. The Proposed Development Will Meet the Purpose and Intent of the California Public Utilities Code § 21670.

The purpose and intent of the California Public Utilities Code § 21670 is to "provide for the orderly development of each public use airport in the state and the areas surrounding these airports so as to promote the overall goals and objectives of the California Airport Noise Standards adopted pursuant to section 21669 and to prevent the creation of new noise and safety problems." In addition, the purpose and intent of the section is also "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 located around public airports to the extent that these are not already devoted to incompatible uses."

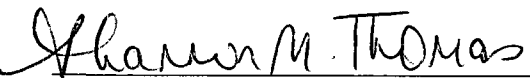
The proposed Project will allow the orderly development of the airport. The Project is located at southwest corner of Mira Mesa Boulevard and Scranton Road. Marine Corps Air Station (MCAS) Miramar is approximately four miles from the Project. Carroll Canyon rests between the Project and MCAS Miramar. The Project site location in relationship to MCAS

Miramar, combined with the surrounding topography, results in the Project not impeding the orderly development of the airport. The proposed Project will also promote the goals and objectives of the State Noise Standards. The basic goal of the State Noise Standards is “to prevent or limit development of land uses that are particularly sensitive to noise,” *see* California Airport Land Use Planning Handbook, § 4.2, p. 4-1, and the established standard for significance of aircraft noise impacts in the State of California is 65 Cumulative Noise Equivalency Level (“CNEL”). Handbook, § 4.2.3, p. 4-5. In this case, the ALUC found that, although the Project is located within the 60-65 CNEL noise contour, “the ALUCP identifies commercial uses located within the 60-65 dB CNEL noise contour as compatible with airport uses.”

Finally, the proposed Project will prevent creation of new noise and safety problems and minimize the public’s exposure to excessive noise and safety hazards, in that the Project is designed primarily as a drive through facility, so that the number of “eat in” seats will be limited to 42. As recognized by the ALUC, the Project does not involve any residential use subject to overflight notification requirements.

BE IT FURTHER RESOLVED, that based on the findings, the City Council proposes to overrule the determination of inconsistency by the San Diego County Regional Airport Authority, acting as the Airport Land Use Commission for San Diego County.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Shannon M. Thomas
Deputy City Attorney

SMT:
04/27/2016
Or.Dept: DSD
Doc. No.: 1274227

Passed by the Council of The City of San Diego on APR 26 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 26 2016.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Mary Fernandez*, Deputy

Office of the City Clerk, San Diego, California
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