



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 10, 2012 REPORT NO: 12-042

ATTENTION: Council President and City Council

SUBJECT: Potential Overrule of the San Diego County Regional Airport Authority's inconsistency determination for a proposed Jack in the Box restaurant located at 9210 Scranton Road.
Project Number 235526

REQUESTED ACTION:

The applicant, Jack in the Box, is requesting that the City Council overrule the Airport Authority's determination that a proposed restaurant use is inconsistent with the Airport Land Use Compatibility Plan for Marine Corps Air Station (MCAS) Miramar.

STAFF RECOMMENDATION:

Uphold the San Diego County Regional Airport Authority's determination, as the Airport Land Use Commission, that the proposed Jack in the Box restaurant is inconsistent with the Airport Land Use Compatibility Plan for MCAS Miramar.

SUMMARY:

BACKGROUND

The Department of Defense requires that military airports prepare Air Installation Compatible Use Zone (AICUZ) Studies to provide recommendations to military and local governments to prevent incompatible land uses. The Navy published an original AICUZ Study for Naval Air Station (NAS) Miramar in 1976. The San Diego Association of Governments (SANDAG) as the Airport Land Use Commission adopted the NAS Miramar Comprehensive Land Use Plan (CLUP) in 1977 as required by state law. The CLUP provided recommendations to the City of San Diego for land use compatibility with NAS Miramar air operations. The 1977 Mira Mesa community plan contained policy recommendations that projects be reviewed for compatibility with the 1977 AICUZ Study for noise and safety.

In 1989, the Navy requested that the City take action to implement the AICUZ Study and CLUP recommendations to prohibit the development of incompatible uses. In 1990, SANDAG updated the CLUP and the City adopted the Airport Environs Overlay Zone to implement the CLUP

recommendations by providing supplemental development regulations. In 1992, the Navy updated the AICUZ Study and SANDAG subsequently amended the CLUP. The Mira Mesa Community Plan was also updated in 1992 and included the noise and safety recommendations and land use criteria from the CLUP.

In 2004, The San Diego County Regional Airport Authority, as the new Airport Land Use Commission, amended the CLUP and renamed it the Airport Land Use Compatibility Plan (ALUCP). The Marine Corps updated the AICUZ Study in 2004 to reflect the Marine Corps air operations. State law requires that the ALUCP be consistent with the noise and safety criteria identified in the AICUZ Study. The Airport Authority adopted an updated ALUCP in 2008 to be consistent with the 2004 AICUZ Study for MCAS Miramar.

From July 2006 to January 2012, the City submitted proposed development projects within the Airport Influence Area to the Airport Authority, so the Airport Authority could determine if the projects were consistent with the updated ALUCP for MCAS Miramar. State law requires that the City submit projects to the Airport Land Use Commission until the Commission determines that its land use plans and zoning are consistent with the ALUCP. The City is required to implement the ALUCP policies and criteria or overrule the Airport Land Use Commission consistency determination for all or portions of the ALUCP. The City adopted the Airport Land Use Compatibility Overlay Zone (ALUCOZ) in October 2011, which went into effect in January 2012. With the adoption of the ALUCOZ, the City is only required to submit projects, proposed plan amendments or rezones to the Airport Authority since the Airport Authority determined the ALUCOZ to be consistent with the ALUCP.

DISCUSSION

Jack in the Box is proposing to construct a new 2,588 square-foot restaurant on a vacant 0.65 acre property located at 9210 Scranton Road within the Mira Mesa Community Planning area. Prior to construction of the restaurant, Jack in the Box must obtain a Planned Development Permit and Site Development Permit. The project site is part of a large six building complex which included two, fifteen story office towers, one two-story financial building and three one-story restaurant buildings, totaling 502,238 square feet of floor area. This project was approved under Planned Industrial Development Permit No. 87-0885, by the Planning Director on December 7, 1987. An Extension of Time to the Planned Development Permit, know as Planned Development Permit No. 93-0199, was granted by the Planning Director on June 16, 1993. Since then minor changes to square footage allocations were reviewed and approved under Substantial Conformance Review, first on May 5, 1998 and the second on March 3, 2005.

The 1976 AICUZ Study and 1977 CLUP show that the Jack in the Box project site was within Accident Potential Zone B which identified restaurants as being normally incompatible. In addressing the CLUP, the permit did limit the height and amount of buildings and preclude office, hotel, and residential uses in Accident Potential Zone B. This original Planned Industrial Development Permit was approved prior to the adoption of the AEOZ supplemental development regulations that implemented the 1990 CLUP land use restrictions.

The 1990 CLUP and 1992 AICUZ Study replaced Accident Potential Zone B with Accident Potential Zone I. The 1990 CLUP shows the project site was within Accident Potential Zone (APZ) I and indicates restaurants as being incompatible within APZ I. The 1992 AICUZ Study shows the project site was within APZ II which identified restaurants as incompatible because of the assembly of people. The 2004 MCAS Miramar AICUZ Study shows the site is within APZ II which indicates that eating and drinking establishments are incompatible. The 2008 MCAS Miramar ALUCP also specifies that eating and drinking establishments are incompatible within the APZ II, which is consistent with the 2004 AICUZ Study.

The City was required to submit the proposed project to the San Diego County Regional Airport Authority (SDCRAA) because the property is located within the Airport Influence Area of Marine Corps Air Station (MCAS) Miramar and, at the time the project was submitted to the City, the SDCRAA had not determined the City's zoning and land use plans to be consistent with the Airport Land Use Compatibility Plan. On July 7, 2011, the SDCRAA determined that the proposed Jack in the Box restaurant was inconsistent with the MCAS Miramar Airport Land Use Compatibility Plan (ALUCP). The SDCRAA's inconsistency determination was based on the fact that the property is located within Accident Potential Zone 2, where eating and drinking establishments are prohibited by the ALUCP (see attached letter, staff report and resolution from the SDCRAA).

The 2008 MCAS Miramar ALUCP provides that a "long-term project" is vested to pursue build out under a prior ALUCP provided that the original project meet numerous criteria, which include (a) obtaining a consistency determination with the prior ALUCP, and (b) obtaining final approval within 15 years of the effective date of the current ALUCP. The proposed project does not meet either of the above criterion since the original entitlements were obtained more than 15 years ago.

Pursuant to Municipal Code Section 132.1555, an applicant may request a decision from the City Council to overrule a determination of inconsistency made by the SDCRAA. On November 29, 2011, Jack in the Box submitted a request for the City Council to overrule the SDCRAA's inconsistency determination. The Municipal Code requires two hearings for any decision by the City Council to overrule a determination of inconsistency. The first hearing (this hearing) shall be a proposed decision whether or not to overrule; and the second hearing shall be a final decision whether to overrule. Both decisions shall be made by a minimum two-thirds vote of the City Council.

A proposed decision to overrule the SDCRAA's determination, shall be supported by the following findings: 1) The proposed development will not be detrimental to the public health, safety, and welfare; 2) The proposed development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible; and 3) The proposed development will meet the purpose and intent of the California Public Utilities Code Section 21670 (airports and protection of public health, safety, and welfare). The applicant has submitted the attached proposed draft findings for the Council's consideration.

In addition, California Public Utilities Code Section 21678 states that "With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's

action or recommendation.” This section could eliminate liability from the airport operator if the City should choose to overrule the inconsistency determination. Although the law is untested, in the absence of airport operator liability, the City could be placed in a position of liability in the case of an accident.

FISCAL CONSIDERATIONS:

None

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The applicant put the processing of the project plans on hold once the airport inconsistency issue arose and has not gone before the Mira Mesa Community Planning Group. Due to this, the Mira Mesa Community Planning Group has not yet forwarded a recommendation regarding this project or the SDCRAA’s determination. The airport operator, MCAS Miramar, has expressed its written objection to the proposed Jack in the Box restaurant at this location.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Jack in the Box of San Diego; Owner-Sorrento Parcels LLC of Newport Beach; The surrounding community of Mira Mesa; The San Diego County Regional Airport Authority; Marine Corps Air Station Miramar; The California Department of Transportation, Division of Aeronautics.

Kelly Broughton, Director
Development Services

Attachments:

1. SDCRAA Staff Report, Letter and Resolution
2. Project Site Map
3. Accident Potential Zone – 1977 Mira Mesa Community Plan
4. Accident Potential Zones – 1992 AICUZ Study
5. Land Use Compatibility – 1992 AICUZ Study
6. Aerial Photo – 1992 AICUZ Study
7. Aerial Photo – 2008 AICUZ Study
8. Applicant’s Draft Findings to Overrule