



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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**DATE:** November 15, 2022

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jovan D. Grogan, City Manager

**PREPARED BY:** Darcy Smith, Assistant City Manager

**SUBJECT:** 1) Hold Public Hearing to Adopt a Resolution Making Draft Findings and Declaring an Intent to Consider Overriding San Mateo City/County Association of Governments (C/CAG) Airport Land Use Commission's (ALUC) Determination of Inconsistency With Respect to Noise Policies for the Draft 2023-2031 Housing Element Update and 2) Authorize the City Manager to Submit the Resolution to the Airport Land Use Commission and the State of California Department of Transportation's Division of Aeronautics, and Schedule a Public Hearing Pursuant to Public Utilities Code Section 21676

### **BACKGROUND:**

#### Airport Land Use Commission and Review of General Plan

The Airport Land Use Commission (ALUC) is an advisory committee created by the Public Utilities Code (PUC) to assist local agencies in ensuring compatible land uses near airports. Portions of the City are located within the planning area defined in the Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport (SFO ALUCP). This land use regulatory plan was adopted by the Board of Directors of the City/County Association of Governments (C/CAG) of San Mateo County, in its capacity as the San Mateo County Airport Land Use Commission ("ALUC") on November 8, 2012. The SFO ALUCP provides land use policies, height limits, and recommendations for development in the areas surrounding San Francisco International Airport (SFO) to ensure that development in the areas surrounding the airport are compatible with airport operations.

Specifically with respect to land uses, the plan provides policies for the orderly development of the area surrounding SFO so as to prevent the creation of new noise and safety problems and ensuring that the land use compatibility policies fall within the level of acceptable risk considered to be a community norm in the environs of SFO. The plan serves to protect the public health, safety, and welfare by 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.

Public Utilities Code Section 21676(b) requires the City to submit General Plans and General Plan amendments to the ALUC for a consistency determination. As such, on September 9, 2022, the City submitted the Draft 2023-2031 Housing Element Update ("Housing Element Update") to C/CAG for an ALUC land use consistency determination with the SFO ALUCP. The proposed 2023-2031

Housing Element will replace the existing 2015-2023 Housing Element and serve as the City of San Bruno's guiding policy document for meeting the City's future housing needs at all economic levels. All future housing development in the City must comply with the General Plan, zoning ordinance, state and federal permits, and local development standards. The City's draft Housing Element Update was submitted to the State Department of Housing and Community Development (HCD) on July 8, 2022, and is currently being revised based on their comments.

### ***Housing Element Update Suitable Sites Inventory***

Government Code Section 65583 (a)(3) requires the City to prepare, as part of the Housing Element, to include a Suitable Sites Inventory. This is an inventory of land in San Bruno that is suitable for residential development, including vacant sites and underutilized sites with the potential for redevelopment. The Housing Element Update also includes an analysis of the relationship of the General Plan, zoning, and public facilities and services to the site inventory as well as an assessment of realistic development capacity for the planning period. Quantified housing construction and rehabilitation objectives are identified for extremely low-, very low-, low-, moderate-, and above moderate-income households.

In the 6th Cycle Regional Housing Needs Allocation ("RHNA") imposed on the City by the Association of Bay Area Governments included 3,165 housing units, which is a substantial increase in the number of affordable housing opportunities required in comparison to the 5th Cycle RHNA allocation of 1,155 units. Additionally, the No Net Loss Law (California Government Code Section 65863) requires that enough sites are available at all times throughout the RHNA planning period to meet a jurisdiction's remaining unmet housing needs for each income category. To ensure that sufficient capacity exists in the housing element to accommodate the RHNA throughout the planning period, HCD recommends jurisdictions create a buffer in the housing element inventory of at least 15 percent (equivalent to an additional 475 units allocated to the City of San Bruno for the 2023-2031 period). Table 1 below presents the City's RHNA and 15 percent buffer broken down by household income category.

<b>Table 1: City of San Bruno RHNA by Household Income Category</b>			
<b>Household Income Category<sup>1</sup></b>	<b>RHNA</b>	<b>15 Percent Buffer</b>	<b>Combined Housing Targets<sup>2</sup></b>
Very Low (<50% AMI)	704	106	810
Low (50-80% AMI)	405	61	466
Moderate (80-120% AMI)	573	86	659
Above Moderate (>120% AMI)	1,483	222	1,705
Total Housing Units	3,165	475	3,640
Source: Association of Bay Area Governments. <i>Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031</i> . December 2021.			
Notes:			
<sup>1</sup> The AMI (area median income) in San Mateo County as of 2022 was \$166,000. Source: U.S. Department of Housing & Urban Development Office of Policy Development & Research . "FY 2022 Income Limits Documentation System". Accessed October 25, 2022. <a href="https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn">https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn</a>			
<sup>2</sup> Combined targets calculated by adding the City's RHNA with the proposed 15 percent buffer.			

The purpose of the Suitable Sites Inventory is to evaluate whether there are sufficient sites with appropriate zoning to meet the RHNA goal. It is based on the city's current land use designations and zoning requirements. The analysis does not include the economic feasibility of specific sites, nor does it take into consideration the owner's intended use of the land now or in the future. It does not dictate where residential development will actually occur, and the decision whether or not to develop any particular site always remains with the owner of the property, not the city. Based on previous Housing Elements, the City anticipates that some of the sites on the list will be developed with new housing, some will not, and some housing will be built on sites not listed in the inventory.

The Housing Element Update includes 23 Housing Opportunity Sites which comprise the Suitable Sites Inventory. Many of these sites are already designated for additional housing as part of the current General Plan. The Housing Element Suitable Sites Inventory includes the Shops at Tanforan ("Tanforan") and the San Bruno Pet Hospital ("Pet Hospital") (collectively, the "Properties") as potential future housing sites. The draft Housing Element includes a minimum of 1,000 housing units at the Tanforan site and 60 units at the Pet Hospital site. The Tanforan site has been identified by ABAG and the City as a prime location for housing based on the policies of Plan Bay Area 2050 and regional greenhouse gas reduction goals because of its proximity to transit. The Pet Hospital site is located across the street from the Tanforan site and within a half mile of high quality transit. ABAG did not take into consideration plans like the SFO ALUCP and the noise restrictions that regulate development of future housing when they utilized their urban simulation model to prepare the City's RHNA number, and housing growth estimates for sites such as Tanforan. The Properties are located within Airport Influence Area B and within the 70 – 75 decibel (dB) Community Noise Equivalent Level (CNEL) contour where housing is prohibited pursuant to the SFO ALUCP, with limited exceptions.

The City's current General Plan Policy, Health and Safety Policy, HS-40 states: "Prohibit new residential development within the 70+ Airport CNEL areas, as dictated by Airport Land Use Commission infill criteria." The City has prepared an amendment to General Plan HS-40: "Prohibit new residential development within the 70+ Airport CNEL areas, as dictated by Airport land Use Commission infill criteria, unless, on a project by project basis, a proposed residential development is approved through the Local Agency Override process consistent with the Public Utilities Code Section 21675.1(d)." This amendment is being processed concurrently with the Housing Element.

On September 30, 2022, the City received a comment letter on San Bruno's Housing Element update from Nupur Sinha, Director of Planning and Environmental Affairs, San Francisco International Airport. This letter is provided as Attachment 2. The letter expressed concern that residential development within 70 dB CNEL contour is incompatible with the policies of the SFO ALUCP. The letter raises many of the same concerns that were raised in the Director's May 2022 letter in response to the city's *Reimagining Tanforan Land Use Fact Sheet*. The letter cites the proposal as being the nation's densest residential development this close to a major international airport. Lastly, the Director asks the city to remain cognizant of the Safety and Airspace compatibility policies of the SFO ALUCP. It should be noted here, the City's application does not include enough information for C/CAG to determine whether the draft Housing Element, or the Tanforan site in particular, would comply with the Safety and Airspace compatibility policies of the SFO ALUCP. This site specific review would be done when the project is submitted for review.

The Airport Land Use Committee of C/CAG reviewed the Draft Housing Element for consistency and at its October 27, 2022 meeting, and made a recommendation to the C/CAG Board of Directors, that the C/CAG Board, acting as the Airport Land Use Commission (ALUC), find San Bruno's draft 2023

– 2031 Housing Element update to be inconsistent with the noise compatibility policies of the SFO ALUCP, due to the location of the Tanforan and Pet Hospital sites within the airport noise contours.

On November 10, 2022, the ALUC is scheduled to meet and consider the Airport Land Use Committee's recommendation. At the time of publication of this report, it is anticipated that the C/CAG will follow the Airport Land Use Committee's recommendation and determine that the Housing Element is not consistent with the noise compatibility policies of the SFO ALUCP because of the location of housing sites within the 70+ decibel noise contours. However, the staff report recommends that the ALUC find that the General Plan Amendment to recognize the Local Agency Override process is consistent with SFO ALUCP. The draft ALUC resolutions are attached as Attachment 3.

## **DISCUSSION:**

### SFO ALUCP Consistency Evaluation

Three airport / land use compatibility factors are addressed in the SFO ALUCP that relate to San Bruno's 2023 – 2031 Housing Element update. These include policies for: (a) noise compatibility, (b) safety compatibility, and (c) airspace compatibility. The following sections address each factor.

#### ***Noise Compatibility***

Attachment 4 shows the proposed housing opportunity sites in relation to the Community Noise Equivalent Level (CNEL) 65, 70, and 75 decibel (dB) aircraft noise exposure contours for SFO.

Pursuant to SFO ALUCP, *Noise/Land Use Compatibility Land Use Criteria* (Attachment 4), residential land uses are conditionally compatible in the CNEL 65-70 dB noise exposure contour range with sound insulation to reduce interior noise levels from exterior sources to CNEL 45 dB or lower and if an avigation easement is granted to the City and County of San Francisco as operator of SFO. Five housing opportunity sites, Sites 7, 15, 18, 20, and 21, are in the CNEL 65-70 dB noise exposure contour range established in the SFO ALUCP. The noise compatibility conditions of the SFO ALUCP would apply to the affected sites at the time of construction permitting.

As further outlined in SFO ALUCP Table IV-1 (Attachment 4), with a limited exception, residential land use is not compatible in the CNEL 70-75 dB noise exposure contour range. The exception applies to existing lots of record zoned for residential use as of the effective date of the SFO ALUCP (November 8, 2012). In such cases, new residences must be sound-insulated to achieve an indoor noise level of CNEL 45 dB or less from exterior sources, and the property owner must grant an avigation easement to the City and County of San Francisco prior to issuance of a building permit for the proposed building.

Two housing opportunity sites, Sites 14 and 19, are in the CNEL 70-75 dB noise exposure contour range. Site 14, the Tanforan Site, is identified to accommodate at least 1,000 housing units. Additionally, up to 60 housing units are identified for Site 19, currently occupied by the San Bruno Pet Hospital.

The Draft Housing Element, with respect to Sites 14 and 19, is inconsistent with the SFO ALUCP noise policies.

### ***Safety Compatibility***

The SFO ALUCP includes safety zones and related land use compatibility policies and criteria. Attachment 4 shows the City's proposed housing opportunity sites in relation to the safety compatibility zones. Two housing opportunity sites, Sites 15 and 21, are in Safety Zone 3 (Inner Turning Zone) and one housing opportunity site, Site 14 (the Tanforan Site), is in Safety Zone 4 (Outer Approach / Departure Zone). Per SFO ALUCP Table IV-2, *Safety Compatibility Criteria*, housing is a compatible use in Safety Zone 3 and Safety Zone 4. Therefore, the Draft Housing Element is consistent with the SFO ALUCP safety policies. Excerpts from the SFO ALUCP are included as Attachment 4.

### ***Airspace Compatibility***

The SFO ALUCP airspace policies establish maximum heights for the compatibility of new structures. The policies also stipulate the need for compliance with federal regulations requiring notification of the Federal Aviation Administration of certain proposed construction or alterations of structures. SFO ALUCP Airspace Policy AP-3 states that in order to be consistent, the maximum height of a structure must be the lower of (1) the height shown on the critical aeronautical surfaces map, or (2) the maximum height determined by the FAA not to be a "hazard to air navigation" by the FAA in an aeronautical study prepared pursuant to the filing of Form 7460-1.

Because the Draft Housing Element is a policy document and not a specific development proposal, the airspace compatibility policies of the SFO ALUCP do not directly apply. Consistency with the airspace compatibility policies would be required for future development proposals stemming from the Draft Housing Element.

### ***Local Override Process***

As a final review authority on legislative acts, the City Council may choose to override the ALUC's determination. The local agency override process involves three mandatory steps:

1. Holding a public hearing by the local agency on the proposed override action;
2. Making of specific findings by the governing body of the local agency that the proposed local action is consistent with the purposes of the airport land use commission statutes;
3. Approval of the override action by a two-thirds vote of the local agency's governing body; the override action must include adoption of the specific findings identified in Step 2, above.

The public hearing process for an override is a two-step process, which is established in Public Utilities Code Section 21676. The local agency override process requires two City Council meetings as follows:

1. **City Council Meeting No. 1** (a public hearing, scheduled to occur on November 15, 2022): The first step in the process is for the City Council to adopt a resolution making draft findings and declaring an intent to override the ALUC's determination of inconsistency with the policies of the SFO ALUCP regarding the Housing Element and to provide notice, in accordance with Sections 21676(b) of the California Public Utilities Code, to the ALUC and the State of California Department of Transportation's Division of Aeronautics. This must occur at least 45 days prior to the decision by the City Council to override the inconsistency determination, as the agencies have a 30-day comment period.

2. **City Council Meeting No. 2** (scheduled to occur on January 24, 2023): The second step in the process is that, not less than 45 days after notification has been sent to the ALUC and Division of Aeronautics, the City Council may decide to adopt a resolution to override the ALUC's determination of inconsistency with the policies of the SFO ALUCP, and make specific findings that the Housing Element is consistent with the purposes of the State Aeronautics Act, as set forth in PUC Section 21670, namely the protection of public health, safety, and welfare in the areas surrounding airports. In the context of the Housing Element, it is envisioned that the City Council will consider overriding the inconsistency determination at the same meeting at which it will consider adopting the Housing Element and its associated General Plan amendment.

Pursuant to SFO ALUCP, GP-10.1, if an affected agency has not made its general plan, specific plans, and zoning ordinance, or facilities master plan consistent with the ALUCP or overridden the ALUCP as provided by law, the local agency shall refer all proposed development and land use policy actions that affect property rights within the project referral area, Area B of the (Airport Influence Area (AIA)), to the Airport Land Use Commission (the C/CAG Board) for a determination of consistency with the ALUCP prior to issuing a permit for the proposed development (PUC Section 21676.5(a)).

The City's General Plan was adopted in March 2009, and C/CAG adopted the SFO ALUCP in November 2012. The General Plan and Zoning Code have not been reviewed for ALUCP consistency. Accordingly, any development projects in the City that are in the SFO ALUCP planning area, including those at the Tanforan site and Pet Hospital site, will be required to go through a separate project level ALUC review.

The attached resolution notifies the ALUC and the Division of Aeronautics of the City's intent to conduct a public hearing and consider whether to adopt a resolution overriding the ALUC inconsistency determination. Any comments received by the ALUC and the Division are advisory to the City Council. However, should comments be received, the City must include them in the public record of any final decision to override the ALUC determination. The ALUC and the Division may provide comments on the intent to override within 30 days of receiving the documents; if they fail to provide comments within that time frame, the City may proceed without considering their comments.

If the resolution of intention is adopted, the City Council would formally consider overriding the inconsistency determination at a later date, at which time the City Council would consider all comments received, including from the ALUC and the Division of Aeronautics. The resolution to override the ALUC at the future hearing must be adopted by two-thirds vote of the City Council.

#### *Implications of a Local Agency Override Action*

There are two key outcomes of a local agency override of an Airport Land Use Commission (C/CAG Board) decision disapproving a proposed land use action as inconsistent with the ALUCP:

- The proposed land use action may proceed, subject to local agency review and permitting processes, as if it had been found consistent with this ALUCP by the Airport Land Use Commission (C/CAG Board).
- If a city or county overrides a decision of the Airport Land Use Commission (C/CAG Board) relating to a publicly owned airport that is not operated by that city or county, the agency operating 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 override the commission's action or recommendation".

**FISCAL IMPACT:** There is no fiscal impact associated with this item.

**ENVIRONMENTAL IMPACT:** There is no environmental impact related to this item. Staff recommends that the City Council find that this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**RECOMMENDATION:**

That the City Council 1) Hold Public Hearing to Adopt a Resolution making draft findings and declaring an intent to consider overriding San Mateo City/County Association of Governments (C/CAG) Airport Land Use Commission's (ALUC) determination of inconsistency with respect to noise policies for the Draft 2023-2031 Housing Element Update and 2) Authorize the City Manager to submit the Resolution to the Airport Land Use Commission and the State of California Department of Transportation's Division of Aeronautics, and schedule a public hearing pursuant to Public Utilities Code Section 21676.

**ALTERNATIVES:**

1. The City Council may decide not to override the ALUC's determination of inconsistency. One option is to identify alternative sites for new housing units, amend the Housing Element, and resubmit the revised document to the ALUC for consistency review. Staff does not recommend this action since the City has been allocated 3,165 housing units through the regional housing needs allocation (RHNA) process, the draft Housing Element includes a minimum of 1,000 housing units at the Tanforan site and 60 units at the Pet Hospital site. The Tanforan site has been identified by the City as a prime location for housing because of its proximity to transit and the Pet Hospital site is located across the street from the Tanforan site and within a half mile of high quality transit. It would be very difficult to accommodate these 1,060 housing units elsewhere in the community. Furthermore, this action would delay potential adoption of the Housing Element by the January 31, 2023 due date.
2. The City Council may choose to take no action. Staff does not recommend this action, as it may result in the ALUC imposing a requirement to review all land use actions, regulations, and permits under Public Utilities Code Section 21676.5, which would substantially delay entitlement and building permit processes including those related to meeting the City's share of RHNA. Furthermore, this action would delay potential adoption of the Housing Element by the January 31, 2023 due date.

**ATTACHMENTS:**

1. Resolution

2. San Francisco International Airport comment letter on San Bruno's 2023 – 2031 Housing Element update dated, September 30, 2022
3. Draft Airport Land Use Commission Resolutions
4. SFO ALUCP Exhibits