

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REQUIRED BY CALIFORNIA PUBLIC UTILITIES CODE SECTION 21676 THAT PROPOSED GENERAL PLAN AMENDMENT AND CONFORMING REZONING OF PROPERTIES WITHIN APPROXIMATELY 262 GROSS ACRES EXTENDING APPROXIMATELY ONE MILE FROM NORTH TO SOUTH, AND GENERALLY BOUNDED BY: LENZEN AVENUE AND THE UNION PACIFIC RAILROAD TRACKS TO THE NORTH; THE GUADALUPE RIVER AND STATE ROUTE 87 TO THE EAST; INTERSTATE 280 TO THE SOUTH; SUNOL STREET AND THE DIRIDON STATION COMMUTER RAIL TO THE WEST, IS CONSISTENT WITH THE PURPOSES SET FORTH IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 21670 AND OVERRULING THE SANTA CLARA COUNTY AIRPORT LAND USE COMMISSION'S (ALUC) DETERMINATION THAT THE PROPOSED GENERAL PLAN AMENDMENT AND CONFORMING REZONING IS INCONSISTENT WITH CERTAIN ALUC NOISE AND HEIGHT POLICIES AS DEFINED BY THE COMPREHENSIVE LAND USE PLAN FOR SAN JOSE INTERNATIONAL AIRPORT

FILE NOS. GP20-007 AND C20-002

WHEREAS, pursuant to the provisions of Section 21676 of the California Public Utilities Code ("Section 21676"), the City made a referral of the General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's plans to the extent that the area covered by the amended Diridon Station Area Plan falls within the ALUC's Airport Influence Area surrounding Mineta San José International Airport ("SJC"); and

WHEREAS, the proposed City-initiated General Plan Amendment amending the Diridon Station Area Plan, is to add development capacity and update sections on land use, design, transportation, and public spaces, and the Conforming Rezoning is in response

to Senate Bill (SB) 1333 to bring the existing site's Zoning Districts into conformance with the existing and amended Diridon Station Area Plan on approximately 262 gross acres in the area generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; the Guadalupe River and State Route 87 to the east; Interstate 280 to the south; and Sunol Street and the Diridon Station Commuter Rail to the west; and

WHEREAS, on December 16, 2020, the ALUC, acting pursuant to its authority under Section 21676, determined that the General Plan Amendment (File No. GP20-007) was inconsistent with ALUC noise and height policies, as defined in the "Comprehensive Land Use Plan for San José International Airport" ("CLUP"); and

WHEREAS, the ALUC found the General Plan Amendment would potentially allow development in conflict with Table 4-1 and Noise Policy N-4 in the CLUP and also potentially allow development to exceed 300 people per acre as prescribed within the Outer Safety Zone; and

WHEREAS, according to Table 4-2 of the SJC CLUP, the Outer Safety Zone allows non-residential uses to a maximum density of 300 people per acre with 20% of the gross area required as Open Space and provides that if non-residential uses are not feasible in the Outer Safety Zone, residential infill is allowed up to the existing density, and no regional shopping centers, theaters, meeting halls, stadiums, schools, large day care centers, hospitals, nursing homes or similar activities are allowed; and

WHEREAS, on December 16, 2020, the ALUC requested the City modify the General Plan Amendment to include language limiting development in the area covered by the amended Diridon Station Area Plan within the Outer Safety Zone, such as to a maximum density of 300 people per acre with 20 percent of the gross area required as Open Space or the Open Space requirement could also be achieved on the adjacent park land, Guadalupe River Park and Gardens, as well as State Route 87, so the General Plan

Amendment to be consistent and comply with the Safety Zone Compatibility policies contained in the CLUP; and

WHEREAS, as part of this override, the General Plan Amendment will include an Outer Safety Zone Overlay with language limiting development in the area covered by the amended Diridon Station Area Plan within the Outer Safety Zone to a maximum density of 300 people per acre with 20 percent of the gross area required as Open Space to comply with the Safety Zone Compatibility Policies in the CLUP; and

WHEREAS, ALUC noted the Open Space requirement could also be achieved on the adjacent park land, Guadalupe River Park and Gardens, as well as State Route 87; and

WHEREAS, on February 24, 2021, the ALUC, acting pursuant to its authority under Section 21676, determined that the Conforming Rezoning (File No. C20-002) was inconsistent with ALUC noise and height policies, as defined in the CLUP; and

WHEREAS, the Outer Safety Zone overlay is both applicable to and enforced in the amended Diridon Station Area Plan and Zoning Districts, and therefore the General Plan Amendment and Conforming Rezoning would not conflict with any of the Safety Zone Compatibility policies contained in the CLUP; and

WHEREAS, in both referral determinations, the ALUC found the General Plan Amendment and Conforming Rezoning would be inconsistent with the CLUP Noise Policy N-4 and Table 4-1 because a portion of the area covered by the amended Diridon Station Area Plan would permit residential outdoor patios or outdoor activity areas within the ALUC CLUP's 65 A-weighted decibels (dBA) Community Noise Equivalent Level (CNEL) noise contour boundaries, and the ALUC CLUP discourages residential uses with outdoor patios or outdoor activity areas within the 65 dBA CNEL noise contour boundaries; and

WHEREAS, in both referral determinations, the ALUC found the General Plan Amendment and Conforming Rezoning would also be inconsistent with the CLUP H-1 height policy, as development in the area covered by the amended Diridon Station Area Plan would allow building heights that exceed Federal Aviation Regulation Part 77 Civil Airport Imaginary Surfaces. The CLUP height policy uses FAR Part 77 Surfaces as a height restriction boundary to determine compatible land uses in the Airport Influence Area; and

WHEREAS, the ALUC made its Land Use Plan inconsistency determination prior to the issuance by the Federal Aviation Administration (FAA) of any “No Hazard” determination for future development in the area covered by the amended Diridon Station Area Plan; and

WHEREAS, if future development exceeds FAR Part 77 Civil Airport Imaginary Surfaces but receives an FAA “Determination of No Hazard” following, an FAA aeronautical study, CLUP Policy H-1 provides that the FAA determination shall prevail; and

WHEREAS, the ALUC found the proposed General Plan Amendment and Conforming Rezoning to be consistent with the CLUP except for noise and height as described above; and

WHEREAS, pursuant to the provisions of Section 21676 the City may after a public hearing on the matter overrule a determination by the ALUC by a two-thirds vote of the quorum of the City Council so long as the City Council makes specific findings that a proposed action is consistent with the purposes set forth in Section 21670 of the California Public Utilities Code (“Section 21670”); and

WHEREAS, Section 21670 provides that the purpose of these sections of the California Public Utilities Code 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 safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses; and

WHEREAS, the City notified the ALUC and California Department of Transportation Division of Aeronautics, in writing, of the City's proposed override of the ALUC's determination and provided a copy to the ALUC of the City's proposal to overrule their findings in a manner consistent with applicable State law; and

WHEREAS, on April 15, 2021, Caltrans submitted written comments to the City on the proposed overrule findings ("Caltrans letter") and a copy of the Caltrans letter is attached hereto as Exhibit "A," and incorporated by this reference; and

WHEREAS, ALUC submitted written comments to the City on the proposed overrule findings in a letter dated April 20, 2021 ("ALUC letter") and a copy of the ALUC letter is attached hereto as Exhibit "B," and incorporated by this reference; and

WHEREAS, the Caltrans letter and the ALUC letter are advisory to the City Council under Section 21676, and

WHEREAS, the ALUC considered and commented on the City's draft resolution for the proposed override of the ALUC's determination, which this City Council has received and considered; and

WHEREAS, the City Council heard and considered all testimony and other evidence presented and submitted, including a memorandum dated [REDACTED], from the Department of Planning, Building and Code Enforcement, related to this item; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. California Public Utilities (CPUC) Section 21676 authorizes a local governmental body to overrule the ALUC's determination if it makes specific findings that the proposed local government body's action is consistent with the purposes of CPUC Section 21670. The City Council hereby makes the following findings to overrule the ALUC's determination of inconsistency with noise and height policies listed in the CLUP:

- A. The recitals above are incorporated herein as findings.
- B. The 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 the public airports to the extent that these areas are not already devoted to incompatible uses.
- C. With respect to safety, the amended Diridon Station Area Plan (DSAP) will include an Outer Safety Zone overlay with language limiting new developments in the area covered by the DSAP within the outer safety zone overlay to a maximum density of 300 people per acre with 20 percent of the gross area required as Open Space. The Open Space requirement could also be achieved on the adjacent park land, Guadalupe River Park and Gardens, as well as State Route 87. The Outer Safety Zone overlay is both applicable to and enforced in the DSAP and Zoning Districts. Therefore, the General Plan Amendment and Conforming Rezoning would not conflict with any of the Safety Zone Compatibility policies contained in the CLUP.
- D. Consistent with the purposes of CPUC Section 21670, the City's General Plan, development review process and methodology ensure that future development within the Airport Influence Area in the area covered by the DSAP would minimize the public's exposure to excessive noise and that a building will only be constructed if its heights and other characteristics result in an FAA Determination of No Hazard to Air Navigation following completion of an aeronautical study.
- E. ALUC Policy N-4 provides no residential or transient lodging construction shall be permitted within the 65 dBA CNEL (CNEL measurement is the same as DNL but adds a 5 dB penalty between 7pm and 10pm) contour boundary unless it can be demonstrated that a) the resulting interior sound levels will be less than 45 dBA DNL (DNL is the Day-Night Average Sound Level over a 24-hour time weight

energy average noise level, with a 10 dB penalty between 10pm to 7am to account for the higher sensitivity to noise at night due to lower background noise) and b) there are no outdoor patios or outdoor activity areas associated with the residential portion of a mixed-use residential project. The City's analysis shows that the Year 2027 65 dBA CNEL noise contour extends into several blocks in the area covered by the DSAP and that the DSAP would allow for residential or hotel use (see Figure 11 of the Initial Study/Addendum to the Downtown Strategy 2040 EIR for the DSAP Amendment). Although the DSAP would allow the above type of development in the 65 dBA CNEL noise contour, the DSAP is consistent with CPUC Section 21670 for the reasons stated below:

1. Consistent with Goal EC-1 of the Envision San José General Plan 2040, with the California Building Code, and with ALUC Policy N-4, interior noise levels in residences and hotel rooms will not exceed 45 dBA DNL. Future entitlements in the area covered by the DSAP would be conditioned to conform to the California Building Code, and with ALUC N-4 interior noise level requirements.
2. General Plan Transportation Policy TR-14.4 requires dedication of aviation easements to protect airport operations. Such easements will be required as conditions of approval for development in the area covered by the DSAP that falls within the ALUC's Airport Influence Area surrounding Mineta San José International Airport, establishing consistency with CLUP Policies G-5 and O-1, which call for aviation easements within the Airport Influence Area.
3. Consistent with CLUP's Noise Compatibility Policy N-5, "all property owners within the Airport Influence Area who rent or lease their property for residential use shall include in their rental/lease agreement with the tenant, a statement advising that they (the tenants) are living within an exterior aircraft noise exposure area designated by the ALUC as greater than the 65 dBA CNEL in a manner that is consistent with current state law including AB2776 (2002)." The policy will be enforced through a condition of approval for future development in the area covered by the DSAP that falls within an exterior aircraft noise exposure area of greater than 65 dBA CNEL.
4. The Envision San José 2040 General Plan identifies outdoor noise environments of 60-75 dBA DNL as "conditionally acceptable" for residential and hotel uses, as long as interior noise levels are mitigated to 45 dBA DNL. The residential outdoor activities areas in the area covered by the DSAP are located both in the environs of the Mineta San José International Airport and in Downtown. These areas are exempt from the 60 dBA DNL exterior noise limit the City applies in other residential areas.

5. Residential exterior spaces such as apartment balconies and ground-floor common areas within the 65 dBA DNL noise contour would be consistent with orderly development of the Mineta San José International Airport. These spaces would be consistent with the recently adopted Airport Master Plan, whose noise analysis provides that residential uses within the 65 dBA DNL contour are considered compatible with airport operations because interiors are sound insulated. Exterior spaces do not preclude such residences from being considered compatible with airport operations.
6. Existing noise conditions in portions of the DSAP exceed 65 dBA CNEL, but these conditions are primarily due to highway, rail and street noise rather than aircraft. Vehicle traffic along I-280 and State Route 87 are the primary contributors to ambient noise levels in the DSAP area.
7. The benefits of access to outdoor spaces, including for multifamily residents, are well documented. The City encourages private outdoor space in multifamily developments. With the required notice, future residents will have the option of living in less urban areas further from the flight path; but in choosing to live in an urban area, they may have the option of spending time in their private balconies and communal outdoor spaces despite the potential annoyance of aircraft overflights. The purpose of the State Aeronautics Act would not be violated by allowing these options.
8. The Mineta San José International Airport maintains a webpage, <https://www.flysanjose.com/noise/noise-complaint>, through which it collects written noise complaints. Both the airport website and the County of Santa Clara website refer readers to this page. The City has examined the resulting records of noise complaints for a 10-year period and found that of 445,000 complaints received through the webpage, 1,505 (0.34 percent), originated in a ZIP code that includes any portion of Downtown San José (95110, 95112, 95113, 95126, and 95192). This ratio reflects a longstanding pattern of more frequent airport noise complaints from less urbanized areas and fewer from downtown areas. To explore specifically whether construction of multifamily residential buildings with outdoor patios and/or outdoor activity areas results in significant noise complaints, the City identified six such existing buildings in Downtown within the 65 dBA CNEL airport noise contour boundary. The addresses were reviewed against the Airport's database. The review shows that in the last ten years, five of these multifamily residential buildings reported no noise complaints and one building nearer to the airport reported a total of twelve complaints. This level of complaint is not considered significant and is consistent with the pattern that Downtown San José generates few airport noise complaints compared

to less urbanized neighborhoods, even from residential buildings that include outdoor activity areas.

- F. ALUC CLUP Policy H-1 provides: “Any structure or object that penetrates the Federal Aviation Regulations Part 77, *Objects Affecting Navigable Airspace* (FAR Part 77) Surfaces, as illustrated in Figure 6 [of FAA Regulations Part 77], is presumed to be a hazard to air navigation and will be considered an incompatible land use, except in the following circumstance. If the structure or object is above the FAR Part 77 surface, the proponent may submit the project data to the FAA for evaluation and air navigation hazard determination, in which case the FAA’s determination shall prevail.” General Plan Transportation Policy TR14.2 requires project proponents to submit this data to the FAA for evaluation and determination.

The DSAP and Conforming Rezoning is in compliance with General Plan Transportation Policy TR14.2 in that if the City Council approves the General Plan Amendment and Conforming Rezoning, future development will require a “Determination of No Hazard” to Air Navigation be issued by the FAA for all buildings prior to issuance of any building permits.

- G. The Caltrans letter is summarized as follows, with responses in italics:

1. The Caltrans letter states; “On December 16, 2020, the SCCALUC [Santa Clara County ALUC] found the proposed GPA and Rezoning inconsistent with the policies of safety, height and noise contained within the SJC CLUP.”

The ALUC did not find the General Plan Amendment or Rezoning inconsistent with any CLUP safety policy; the ALUC considered their consistency with the CLUP policies for safety, height and noise, but found inconsistencies only with specific noise and height policies.

2. The Caltrans letter found the City’s existing General Plan, Rezoning and the City’s proposed resolution are inconsistent with CLUP Noise Policies, Table 4-1 and Policy N-4.

Although there are inconsistencies with CLUP Noise Policies, the City requires compliance with the cited Building Code maximum interior noise standards, regularly imposes Standard Condition of Approval NO-2 to ensure compliance for residential and hotel development, and requires acoustical analysis for residential type structures in areas that exceed 65 dB CNEL or DNL.

3. The Caltrans letter also addresses residential and hotel exterior use spaces within the 65 dBA CNEL noise contour boundaries, concluding some of the findings in the City's Resolution are individually insufficient to support the City's Conclusion that provision of these spaces would not cause inconsistency with the purposes of the Aeronautics Act.

This resolution does not rely on any single finding to support this conclusion, but rather on all the findings taken together; these findings include not only benefits of exterior spaces and minimal airport noise complaints from Downtown residents within the 65 dBA CNEL noise contour boundaries who have outdoor spaces, but all six other findings, including requirements for aviation easements and pre-contract notices to residential buyers and tenants.

4. Regarding building heights, Caltrans differs with the City's reliance on the FAA's regulatory process to ensure that heights of buildings that will be proposed for development under the General Plan Amendment and Rezoning will be studied by the FAA as required by federal regulation and receive a determination of no hazard as a condition for issuing a building permit.

The FAA is the only authoritative source on airspace utilization. FAR Part 77 and its imaginary airspace surfaces are used by the FAA to identify structures requiring aeronautical studies and airspace determinations. If a proposed building exceeds Part 77 surfaces, then the FAA is required to determine the potential aeronautical effect. The FAA's studies account for all known and proposed structures in the airport environment and consider both project-specific and cumulative effect.

5. The Caltrans letter emphasizes the importance of the San José International Airport and expresses concern that the building heights permitted by the project would reduce the operating utility or constrain future Airport development.

City policy also emphasizes the importance of the Airport, and the City Council has concluded that a vital Downtown and local economy are important to protecting the Airport's future. In addition, the City's Airport Department has been actively engaged in reviewing the General Plan Amendment and Rezoning and considers them to be consistent with Airport planning, safety and economic interests.

H. The ALUC letter is summarized as follows, with response in italics:

1. ALUC acknowledges that the City of San José has prescribed the density for the area within the Outer Safety Zone to be in compliance with the 300 people per acre maximum through the General Plan Amendment and Rezoning.

Accordingly, ALUC's ground for its finding of inconsistency based on the potential for the General Plan Amendment to allow future development to exceed 300 people per acre as prescribed within the outer safety zone is no longer accurate as the General Plan Amendment is consistent.

2. The ALUC letter states that the ALUC believes a settlement agreement providing for the ALUC to modify the CLUP "to include no outdoor residential space within the 65 dBA noise contour or greater" would be violated by allowing the General Plan Amendment and Rezoning to move forward.

The statement that the adoption of the Envision San José 2040 General Plan "included a court order settlement agreement" is incorrect. Instead, in 2011, the City and the ALUC settled the City's CEQA challenge to the 2010 version of the CLUP. The ALUC's statement that the settlement agreement provided for modification of the CLUP "to include no outdoor residential space within the 65 dBA CNEL noise contour" is also incorrect. The settlement agreement listed changes to other CLUP provisions, but none pertaining to outdoor patios or any noise issue. In addition, the settlement agreement could not, and did not purport to, divest the City of its statutory right, and obligation under appropriate circumstances, to overrule an ALUC determination of CLUP inconsistency under Section 21676.

3. The ALUC letter states that resolution findings regarding the consistency between City General Plan, City of San José Master Plan and Diridon Station Plan are not relevant to the decision-making responsibility of the ALUC.

This statement is accurate, but the resolution is for consistency with the purpose of the Aeronautics Act. The findings that cite the City's General Plan and Master Plan are relevant to airport land use issues of safety, height and noise, and are relevant to the City Council decision to overrule the ALUC's determination under Section 21676.

4. The ALUC letter states "Also, on January 13, 2021, the Federal Aviation Administration ("FAA") published, in the Federal Register, Vol. 86, No. 8,

Docket No. FAA-2021-0037 a noise analysis of impacts to receptors adjacent to airports. The ALUC notes regarding noise that document has direct applicability to the subject project and would be inconsistent with it.”

As stated in the Federal Register, the FAA has only released the cited document for public comments; accordingly, the document has no direct applicability to any project. The Federal Summary States: “The FAA is releasing a summary to the public of the research programs it sponsors on civil aircraft noise that could potentially inform future aircraft noise policy. The FAA invites public comment on the scope and applicability of these research initiatives to address aircraft noise. The FAA will not make any determination based on the findings of these research programs for the FAA’s noise policies, including any potential revised use of the Day-Night Average Sound Level (DNL) noise metric, until it has carefully considered public and other stakeholder input along with any additional research needed to improve the understanding of the effects of aircraft noise exposure on communities.”

5. The ALUC letter states that the ALUC uses FAA Part 77 Surfaces as a height restriction boundary. It further states that the General Plan Amendment would also allow building heights in conflict with FAA Part 77 Surfaces by using TERP surfaces to define future building heights.

This comment does not take into consideration the fact that any building proposed under the General Plan Amendment with a height that conflicts with FAA Part 77 Surfaces will be required to obtain a determination of no hazard from the FAA before any building permits will be issued. Accordingly, all buildings that will be proposed for development under the General Plan Amendment and Rezoning in conflict with Part 77 surfaces will be studied by the FAA as required by federal regulation and receive a determination of no hazard as a condition of development and therefore the use of TERP surfaces in the General Plan Amendment does not create a conflict. In addition, see response above to Caltrans letter regarding FAA Part 77 Surfaces.

6. ALUC incorporates Caltrans April 15, 2021 letter by reference.

Please see responses to Caltrans letter dated April 15, 2021, in Section 1.G., above.

SECTION 2. Therefore, based upon the findings set forth above, the City Council hereby finds that the General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) are not in conflict with and would be consistent with the purposes set forth in California Public Utilities Code Section 21670, regarding protection of 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.

SECTION 3. Based upon all of the foregoing findings and conclusions, the City Council hereby overrules the ALUC determination of nonconformance of General Plan Amendment (File No. GP20-007) and Conforming Rezoning (File No. C20-002) with the noise and height polices within the CLUP.

ADOPTED on this ___ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"

Caltrans Letter dated 4/15/2021

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S. #40

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April 15, 2021

Mr. José Ruano, Planner II
Building and Code Enforcement
Department of Planning
City of San José
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113-1705

Electronically Sent
Jose.ruano@sanjoseca.gov

Dear Mr. Ruano:

The California Department of Transportation (Caltrans), Division of Aeronautics (Division) received a proposed overrule by the city of San José (City) on March 16, 2021. Pursuant to California Public Utilities Code (PUC) section 21676(a)¹, an overrule may be proposed by the City after the Santa Clara County Airport Land Use Commission (SCCALUC) finds a general or specific plan, including amendments, inconsistent with the Comprehensive Land Use Plan (CLUP)² for Norman Y. Mineta San José International Airport (SJC).

The proposed overrule involves a General Plan Amendment (GPA) and Conforming Rezoning, City File Nos. GP20-007 and C20-002, also known as the Diridon Station Area Plan³. These proposed land use actions were submitted to the Santa Clara County Airport Land Use Commission (SCCALUC) for a consistency determination with the SJC Comprehensive Land Use Plan (CLUP). On December 16, 2020, the SCCALUC found the proposed GPA and Rezoning inconsistent with the safety, height, and noise policies contained within the SJC CLUP.

In response to the SCCALUC's inconsistency finding, the City prepared a resolution with draft findings in support of the GPA and Rezoning. The Division has reviewed the City's proposed findings and has determined the proposed findings are not consistent with the declaration and purposes of the statutes set forth in PUC section 21670⁴ and with the foundational principles contained in the California Airport Land Use Planning Handbook (Handbook)⁵

The SCCALUC found the GPA and Rezoning inconsistent with the SJC CLUP noise policies, Table 4-1 and Policy N-4. The Table shows residential uses are "Generally Unacceptable" between the 65-70 decibel (dB) Community Noise Equivalent Level (CNEL) Noise Contours. Further, Policy N-4 of the SJC CLUP states, "that no

residential or transient lodging construction shall be permitted within the 65 dB CNEL contour boundary unless the resulting interior sound levels will be less than 45 dB CNEL and there are no outdoor patios or outdoor activity areas.” The City’s resolution includes a finding that states, “Although the project is proposing residential type development in the 65-70 dB CNEL noise contour, the City finds the project consistent with Section 21670.” This finding is inconsistent with PUC section 21670 in that it does not promote the overall objectives of the California airport noise standards pursuant to PUC section 21669 and prevent the creation of new noise problems. It is also inconsistent with the Handbook Table 4B that shows 65 dB CNEL is generally not acceptable for most new development.

The finding pertaining to Goal EC-1 of the Envision San José General Plan 2040 (General Plan) is not consistent with the Handbook, which references the California Building Code (Building Code)⁶ section 1207.11. The Building Code establishes a maximum interior noise of 45 dB CNEL⁷. The Division cautions the City that if interior noise exposure exceeds 45 dB, then the City may be liable for future retrofits. Further, the Building Code requires a general plan that includes an airport’s noise contours. According to the Building Code, if residential type structures exceed 60 dB CNEL or DNL, per the Noise Element, then an acoustical analysis is required.

The Division finds that the City’s General Plan policies regarding outdoor noise limits within the environs of SJC and in downtown San Jose inconsistent with PUC section 21670, 21674.7(b), and PUC section 21675(a).

- The City’s General Plan does not discourage incompatible land uses near existing airports (PUC section 21674.7)
- Proposed buildings are not guided by the noise criteria compatible with airport operations (PUC section 21674.7); and
- The GPA does not safeguard the inhabitants within the vicinity of airports (PUC section 21675(a)).

The finding regarding exterior spaces being consistent with the SJC Airport Master Plan is not consistent with PUC section 21670(a), and PUC section 21676(a)⁸. Further, the SJC Master Plan noise analysis does not supersede SJC CLUP policies (PUC section 21676(c)).

The finding regarding the largest contributing factor to 65-70 dB CNEL noise measures is from highways, streets, and rail systems is not supported.

The Division finds that the City’s noise complaint tracking system indicating minimal noise complaints from existing development is not consistent with PUC section 21670. This finding does not account for future conditions and does not prevent new noise problems.

The City's resolution states that "the ALUC made its Land Use Plan inconsistency determination prior to the Federal Aviation Administration's issuance of any "No Hazard" determination for the subject project and that CLUP Policy H-1 provides that the FAA determination shall prevail." Federal Aviation Administration (FAA) aeronautical studies are typically conducted upon submission of Code of Federal Regulations (CFR), Part 77, Form 7460-1⁹, which pertains to specific structures, objects, or natural features. FAA aeronautical studies do not typically consider broad policies and standards applicable to a general or specific plan or a cumulative number of future buildings, objects, or natural features as proposed with the GPA and Rezoning. If the FAA has made a "Determination of No Hazard," it was not submitted with the proposed resolution and findings

Further, the Legislature enacted PUC sections 21402¹⁰ and 21659(a)¹¹ for airspace protection purposes. According to the California State Aeronautics Act, CFR Part 77 (Part 77) is used as the primary airspace protection standard for the State. In addition, the provisions of PUC section 21670 (inclusive) reference Part 77 for ALUCs' use in airport land use compatibility planning and policy formation. FAA Determinations on an Airspace Study is a finding relative to Part 77 surfaces surrounding an airport. If a local agency proposes policies with respect to building heights that cover large areas, a cumulative number of future buildings, several objects, or swaths of natural features, then Part 77 is the appropriate standard for establishing building height maximums. The SCCALUC adopted their policies consistent with the Handbook's foundational principles.

The City resolution also includes a finding that states, "the project is in compliance with General Plan Transportation Policy TR14.2." The City's finding is not consistent with PUC section 21670 because it requires future determinations by the FAA for individual buildings, objects, or specific natural features. It does not demonstrate that cumulative future conditions would ensure the orderly development of SJC or maintain protection of SJC airspace. Such consequences may reduce the operating utility of SJC. Ultimately, it may be more appropriate for the City to seek the FAA's assistance in conducting an aeronautical study that evaluates all potential development scenarios to best protect SJC and SJC's airspace.

Development encroachment upon an airport is likely to constrain an airport's vital contribution to the community, region, and State, and exposes people to safety hazards and excessive noise. In addition, SJC provides economic stimulus, generates on and off airport jobs, and is a hub for domestic and international commerce and tourism.

Caltrans concurs with SCCALUC's inconsistency determination because SJC is important to the California Aviation System Plan.

Mr. Jose Ruano
April 15, 2021
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If you have questions or need further assistance, please contact me at (916) 654-5314 or via email at robert.fiore@dot.ca.gov.

Sincerely,

Original signed by

ROBERT FIORE
Aviation Planner

c: Ryan Sheelen, C.M., Airport Planner III, Planning and Development Division
San José International Airport; rsheelen@sjc.org

Laurie Suttmeier, FAA, SFO; laurie.suttmeier@faa.gov

Mark Connolly, Program Manager, Santa Clara County Airport Land Use
Commission; Mark.Connolly@PLN.SCCGOV.ORG

ENDNOTES

¹PUC section 21676(a), each local agency whose general plan includes areas covered an airport land use compatibility plan must submit a copy of its plan or specific plan to the airport land use commission (ALUC).

²PUC section 21675(a): Each commission shall formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.

³The proposed City-initiated General Plan Amendment amending the Diridon Station Area Plan, is to add development capacity and update sections on land use, design, transportation, and public spaces, and the Conforming Rezoning is in response to Senate Bill (SB) 1333 to bring the existing site's Zoning Districts into conformance with the existing and amended Diridon Station Area Plan on approximately 262 gross acres.

⁴PUC section 21670(a): The Legislature hereby finds and declares that: (1) It is in the public interest 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 the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems. (2) It is the purpose of this article 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.

⁵PUC section 21674.7

⁶ California Code of Regulations, Title 24

*"Provide a safe, sustainable, integrated, and efficient transportation system
to enhance California's economy and livability"*

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

**"A"
002)**

⁷ The Building Code states that "interior noise levels shall not exceed 45 (dB) for either the Day-Night Average Sound Level (DNL) or the CNEL. The worst-case noise level of existing or 10 years in the future shall be used." The City's resolution does not provide the General Plan noise contours and analysis regarding a future worst-case scenario for residential type uses as required by the Building Code.

⁸PUC 21676(c): Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission.

⁹ Title 14, Code of Federal Regulations (CFR) Part 77, "*Safe, Efficient Use and Preservation of the Navigable Airspace.*"

¹⁰The ownership of the space above the land and waters of this State is vested in the several owners of the surface beneath, subject to the right of flight described in Section 21403. No use shall be made of such airspace which would interfere with such right of flight; provided, that any use of property in conformity with an original zone of approach of an airport shall not be rendered unlawful by reason of a change in such zone of approach.

¹¹No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless the Federal Aviation Administration has determined that the construction, alteration, or growth does not constitute a hazard to air navigation or would not create an unsafe condition for air navigation.

EXHIBIT "B"

Airport Land Use Commission Letter dated 4/20/20

April 20, 2021

Jose Ruano, Planner II
City of San José | 200 E. Santa Clara St. 3rd Floor San José, CA 95113
Department of Planning, Building and Code Enforcement

RE: ALUC comments on Overrule findings proposed by the City San Jose for the for the Diridon Station Area Plan Amendment (City of San Jose file number GP20-007 and C20-002), affecting lands within the San Jose International Airport Influence Area (AIA).

Dear Mr. Ruano:

The ALUC considered the City's proposed overrule of Diridon Station Area Plan Amendment at its March 24, 2021 meeting and concluded that the proposed overrule is not consistent with the purposes of Article 3.5 of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, sections 21670 through 21679.5, which are to protect public health, safety and welfare by, among other things, ensuring 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. The specific reasons for the ALUC's determination are provided below.

In general, the ALUC finds that the overrule findings made by the City of San Jose are insufficient and not factual, as well as inconsistent with the purposes of the CLUP.

The ALUC acknowledges that despite the project being located partially within the Outer Safety Zone, the City of San Jose has prescribed the density for this area to be in compliance with 300 people per acre through the Diridon Station Area Plan (General Plan) and referenced Rezoning.

Although the SJC Masterplan is an operational document for SJC, not an ALUC CLUP document, the Overrule resolution states on page 7, among other citations, that the Diridon Station Area Plan Amendment is consistent with the SJC Masterplan. The Diridon Station Area Plan uses TERP surfaces to dictate future building height. Using TERP surfaces creates a conflict with the SJC Masterplan and the City General Plan because both use Part 77 surfaces. Also, only the SJC CLUP is used by the ALUC to make their consistency determinations.

Unless and until the City pursues the appropriate means to propose CLUP amendments, Federal Aviation Administration(FAA) Part 77 Surfaces are the guiding surfaces for height restriction boundaries for the San Jose International Airport AIA. Applying TERP surfaces in the proposed Diridon Station Area Plan Amendment is both inconsistent with the SJC Airport Masterplan and the ALUC SJC CLUP.

Regarding noise; The Envision San Jose 2040 General Plan adoption by the City, included a court order settlement agreement, accepted by the City and ALUC, that the San Jose International Land Use Plan (CLUP) would be modified to include no outdoor residential space within the 65 dBA noise contour or greater. The ALUC believes that allowing the project to

move forward as proposed would be in violation of the settlement agreement and inconsistent with the SJC CLUP.

Also, on January 13, 2021, the Federal Aviation Administration (“FAA”) published, in the Federal Register, Vol. 86, No. 8, Docket No. FAA-2021-0037 a noise analysis of impacts to receptors adjacent to airports. The ALUC notes regarding noise that the document has direct applicability to the subject project and would be inconsistent with it.

The April 15th Cal Trans division of Aeronautics letter from Bob Fiore, transmitted to the City of San Jose, is incorporated by reference, which strongly supports the ALUC’s decision.

The ALUC wishes to reiterate the following were the grounds under which the ALUC found the project **Inconsistent**:

The ALUC considered the above referral for consistency with the policies of safety, height and noise contained within the San Jose International Airport Comprehensive Land Use Plan (SJC CLUP), at their December 16, 2020 Meeting.

The proposed General Plan Amendment would allow development in conflict with Table 4-1 and Noise policy N-4 of the SJC CLUP.

Table 4-1 of SJC CLUP states: “residential uses are “Generally Unacceptable” between the 65-70 dBA CNEL Noise Contours. New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design. Outdoor activities are likely to be adversely affected.”

Policy N-4 of the SJC CLUP states: “No residential or transient lodging construction shall be permitted within the 65 dB CNEL contour boundary unless it can be demonstrated that the resulting interior sound levels will be less than 45 dB CNEL and there are no outdoor patios or outdoor activity areas associated with the residential portion of a mixed-use residential project or a multi-unit residential project. (Sound wall noise mitigation measures are not effective in reducing noise generated by aircraft flying overhead.) “

The General Plan Amendment would potentially allow future development to exceed 300 people per acre as prescribed within the outer safety zone (OSZ).

An approximate eight (8) acres of the plan area would allow an approximate population density of 2,400 people per acre. The proposed General Plan designations in this area would be Downtown and Downtown Commercial.

The Downtown land use designation would allow a very broad range of uses up to 800 dwelling units per acre and an FAR of 30.

The Downtown Commercial land use designations would allow a floor area ratio FAR of 15.0.

The height allowed in these areas is between 180 and 205 feet tall above grade. Parcel sizes vary and would dictate the specific floor area ratio allowed. However, the proposed density and height would likely allow an exceedance of 300 people per acre for the sites within the Outer Safety Zone.

According to Table 4-2 of the SJC CLUP, the OSZ allows non-residential uses to a maximum density of 300 people per acre with 20% of the gross area required as Open Space.

Table 4-2 also provides that, if non-residential uses are not feasible in the OSZ, residential infill is allowed up to the existing density. No regional shopping centers, theaters, meeting halls, stadiums, schools, large day care centers, hospitals, nursing homes or similar activities are allowed. However, no specific development is proposed with the project.

The proposed General Plan Amendment would also allow building heights in conflict with FAA Part 77 Surfaces by using TERP surfaces to define future building heights. The ALUC uses FAA Part 77 Surfaces as a height restriction boundary.

If you have any questions, please feel free to contact ALUC staff, Mark Connolly, at 408-299-5786, or via e-mail at mark.connolly@pln.sccgov.org.

Sincerely,



Mark J. Connolly
Senior Planner / ALUC Program Manager

Cc: John Tu; Supervising Planner, City of San Jose