

**From:** [Tu, John](#)  
**To:** [Downtown West Project](#)  
**Subject:** Fw: ALUC Dec 16 - Report  
**Date:** Thursday, December 10, 2020 9:38:30 AM  
**Attachments:** [DSAP ALUC Report.pdf](#)  
[DTW ALUC Report.pdf](#)

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Best,  
Tong (John) Tu

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**From:** Ruano, Jose <Jose.Ruano@sanjoseca.gov>  
**Sent:** Thursday, December 10, 2020 8:35 AM  
**To:** Rood, Timothy <timothy.rood@sanjoseca.gov>; Tu, John <john.tu@sanjoseca.gov>  
**Subject:** ALUC Dec 16 - Report

Good morning,

Attached are Mark Connolly's reports for DSAP and DTW referral.

Thanks,

Jose

Jose Ruano, Planner II  
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103913

**DATE:** December 16, 2020

**TO:** Airport Land Use Commission

**FROM:** Mark Connolly, Senior Planner / Deputy Zoning Administrator

**SUBJECT:** City of San Jose referral for an amendment to the Diridon Station Area Specific Plan

**RECOMMENDED ACTION**

Consider recommendations relating to the Diridon Station Area Plan Amendment, affecting lands within the San Jose International Airport (SJC) Airport Influence Area. (City of San Jose File No. GP20-007)

Possible action:

- a. Find the Specific Plan Amendment consistent with the policies contained within the SJC Comprehensive Land Use Plan (CLUP).

OR

- b. Find the Specific Plan Amendment inconsistent with the policies contained within the SJC CLUP.

**REASONS FOR RECOMMENDATION**

The subject referral is a Specific Plan amendment for the Diridon Station Area Plan (DSAP), which is an amendment to the existing 2014 Diridon Station Area Plan. The location is south of SJC and west of the downtown San Jose core area, with the Diridon Transit Station as a focal center point of the Specific Plan area. The plan area includes development of land uses within an approximate 300-acre project boundary.

The project site is located within the San Jose International Airport (SJC) Airport Influence Area (AIA), between SJC and the Downtown area. As can be seen on Figure 1 of the referral, approximately half of the Diridon Station Area Plan area is located within the AIA of SJC. These areas are currently identified as Area A (Julian North) and Area B (Arena North) and allow Transit Employment Center, Urban Village and Downtown General Plan Land Use designations. The proposed amendment would remove these General Plan Land Use designations and replace them with Downtown and Downtown Commercial General Plan designations. The Plan omits the Downtown West project boundary, which is a separately proposed project that will be referred to the ALUC following the DSAP referral.

Therefore, the analysis in this report will be limited to these two areas of the Plan (Julian North and Arena North) located within the AIA.

The DSAP amendment is technically an amendment to a Specific Plan within the City's General Plan, which includes both map and text amendments. Pursuant to State Law, anytime modifications to a Specific Plan are proposed within the Airport Influence Area (AIA) of an adopted CLUP, a referral must be made to the County ALUC for a consistency determination. The City must refer the application to the ALUC to provide a consistency determination with the appropriate CLUP policies prior to final approval.

The following is a consistency analysis of the Diridon Station Area Specific Plan amendment with the San Jose International Airport Comprehensive Land Use Plan (CLUP):

### **Noise:**

The SJC noise contours use CNEL for depicting noise disruption from aviation activity, due to the penalty added during nighttime activities where aviation noise disruption could affect people the most. The SJC CLUP uses 65, 70 and 75 decibel CNEL noise contours and includes different noise mitigation based on the type of use exposed to aviation noise.

As seen on Figure 3 of the referral "Land Use/ Noise Contours", the Specific Plan area is located between the 60 and 70 dBA CNEL noise contours and would allow Employment Commercial, residential and retail uses within these CNEL noise contours.

According to Table 4-1 of the SJC CLUP, Office Buildings, business commercial, professional and retail uses are "Generally Acceptable" between the 60-70 dBA CNEL Noise Contours.

However, residential uses are "Generally Unacceptable" between the 65-70 dBA CNEL Noise Contours. Table 4-1 of the SJC CLUP states:

*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.*

Also, 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.)*

Interior noise insulation and insulated fenestration would be required by the City, but the outdoor areas associated with residential development would be exposed.

City of San Jose included language from its General Plan and Zoning Code into the current 2014 Diridon Station Area Plan, which includes the following "Safe Airport" policies:

### **Goal TR-14 – Safe Airport**

- Ensure that airport facilities in San José are safe by removing potential conflicts between land use and airport operations.

### **Policies – Safe Airport**

- TR-14.1 Foster compatible land uses within the identified Airport Influence Area overlays for Mineta San José International and Reid-Hillview airports.
- TR-14.2 Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
- TR-14.3 For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San José International and Reid-Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
- TR-14.4 Require aviation and “no build” easement dedications, setting forth maximum elevation limits as well as for acceptance of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.

The current DSAP amendment omits reference to these policies. However, they are still in the Envision San Jose 2040 General Plan and should still be used by the City of San Jose staff to ensure a projects consistency with the General Plan.

However, as there are no specific policies within the Specific Plan amendment or existing Safe Airport policies that would prohibit residential outdoor space within the 65 dBA CNEL contour, the DSAP amendment would be inconsistent with the SJC CLUP noise policies.

A solution that is not proposed in the DSAP amendment, could be if the City agreed to add language into the DSAP amendment that precluded residential outdoor space within the 65 dBA CNEL. If such language is not included, the DSAP amendment would be inconsistent with the SJC CLUP noise policies.

### **Safety:**

Safety of people on the ground and in the air and the protection of property from airport-related hazards are among the responsibilities of the Airport Land Use Commission. The 2002 Caltrans Handbook presents guidelines for the establishment of airport safety areas in addition to those established by the FAA.

Airport safety zones are established to minimize the number of people exposed to potential aircraft accidents in the vicinity of the Airport by imposing density and use limitations within these zones. The safety zones are related to runway length and expected use.

As can be seen on Figure 4 of the referral “Land Use / Safety”, four plan areas lie within the Outer Safety Zone (OSZ) for SJC. Both Downtown and Downtown Commercial Land Uses, which include residential and retail development. The Downtown land use designation would

allow a very broad range of uses including potential hospitals, residential and commercial development up to 800 dwelling units per acre and an FAR of 30. The DSAP amendment states “While this land use designation allows for up to 800 dwelling units to the acre, achievable densities may be much lower in a few identified areas to ensure consistency with the Santa Clara County Comprehensive Land Use Plan(CLUP)”. However, there is nothing specific in the plan amendment that would limit density specifically within the outer safety zone. The Downtown Commercial land use designations would allow a floor area ratio FAR of 15.0.

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. This portion of the plan area is approximately eight (8) acres, where the Specific Plan amendments would allow an approximate population density of 2,400 people in this area.

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.

The CLUP density policies do not focus on type of use, such as residential or commercial, but rely on people per acre as the prescription for acceptable density. As will be discussed in the height section below, 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, it is highly likely development under the Specific Plan amendments would allow an exceedance of 300 people per acre given the FAR and height allowed and any of the sites within the Outer Safety Zone.

As supported by the “Safe Airport” policies in the City’s General Plan, staff recommends the following language be added into the DSAP amendment:

- The maximum density of development within the Outer Safety Zone of the SJC CLUP shall be limited to 300 people per acre with 20% of the gross area required as Open Space.

As a note, the required Open Space could be achieved on the adjacent park land, Guadalupe Garden and Creek area, as well as Highway 87.

Overall, if the recommended language were added into the Diridon Station Area Plan amendment, the amendment would not conflict with any of the safety policies contained within the SJC CLUP. If the City were not amenable to the addition of the above language, the DSAP amendment would be inconsistent with the SJC CLUP safety policies.

### **Height:**

Airport vicinity height limitations are required to protect the public safety, health, and welfare by ensuring that aircraft can safely fly in the airspace around an airport. This protects both those in the aircraft and those on the ground who could be injured in the event of an accident. In addition, height limitations are required to protect the operational capability of airports, thus preserving an important part of National and State aviation transportation systems.

Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, establishes imaginary surfaces for airports and runways as a means to identify objects that are obstructions to air navigation. Each surface is defined as a slope ratio or at a certain altitude above the Airport elevation. The ALUC uses the surfaces as height restriction boundaries.

Figure 5 of the referral is titled “existing heights / OEI”, but is actually the FAA FAR Part 77 surfaces. Figure 6 shows the Terminal Instrument Procedures (TERPS) surfaces. And Figure 7 shows the ground elevations. In June of 2020, the San Jose City Council adopted TERPS as the height limitation surfaces for the area south of SJC. Because there was no associated projects, there was no required referral to the ALUC for consideration. However, City staff did attend an ALUC meeting in March of 2020 as a courtesy to inform them of the changes.

Figure 9 shows the proposed heights in the DSAP Specific Plan amendment. For comparison, Figure 8 shows the existing heights allowed in the 2014 DSAP.

The adoption of TERPS surfaces as a height standard allow heights that exceed the Part 77 surfaces by varying heights of 80-120 feet

Figure 9 of the referral shows building heights up to 295 feet tall allowed within the Station Area Plan amendment. All proposed heights proposed in the DSAP amendment would exceed the allowed heights ( FAR Part 77 Surfaces) in the SJC CLUP

According to Section 20.70.200, the City of San Jose Zoning Ordinance, the height of structures within the Airport Influence Area (AIA) of SJC is as follows:

- Except as otherwise specified in this chapter, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport.
- No building or structure, together with any equipment or objects attached to such building or structure, shall be permitted of a height that exceeds the elevation restrictions prescribed under Federal Aviation Regulations Part 77 (14 C.F.R. Part 77), as amended, unless the proposed height is specifically reviewed in an aeronautical study prepared by the Federal Aviation Administration in accordance with such federal regulations and the study concludes that the proposed building or structure does not constitute an obstruction or hazard to air operations.

Notwithstanding the Safe Airport policies and the above ordinance language, The DSAP amendment, that uses TERPS surfaces as a height standard, would allow heights in conflict with the CLUP height policies. Therefore, the DSAP amendment is inconsistent with the SJC CLUP height policies.

Because the City has already adopted the TERP surfaces as a policy, there is no way that the DSAP using TERP surfaces can be consistent with the SJC CLUP height policies, because the CLUP uses FAA FAR Part 77 surfaces as a height restriction boundary.

### **Avigation Easement:**

Avigation Easements provide notice to future owners and occupants of buildings that there will be aviation activity around them. Avigation Easements are important disclosures both for the public and airport operators to ensure aviation activity is taken into consideration.

SJC CLUP policy G-5 states: “Where legally allowed, dedication of an avigation easement to the City of San Jose shall be required to be offered as a condition of approval on all projects located within an Airport Influence Area, other than reconstruction projects as defined in paragraph 4.3.7 [of the CLUP]. All such easements shall be similar to that shown as Exhibit 1 in Appendix A [of the CLUP].”

Neither the Diridon Station Area Plan, nor the amendment, propose any specific development. Therefore, at the time of any future specific development proposals, the City of San Jose, Planning Staff will require Avigation Easements as a condition of all such development.

### **STEPS FOLLOWING ACTION:**

Following the consistency determination by the ALUC, staff will forward the recommendations to the City of San Jose to include in the final action of the City of San Jose Planning Commission and City Council. If the ALUC determines the Plan amendments are inconsistent with the SJC CLUP, the City may initiate the overrule process, which requires a two-thirds vote of the local agency’s governing body, supported by specific findings which demonstrate that the plan(s) satisfy the purposes of the State Aeronautics Act {PUC 21670 et seq} and guidance of the state’s Airport Land Use Planning Handbook.

Section 4.2.2.1 of the SJC CLUP (Overrule Notification Process) states that in the event of intent to overrule, the affected local agencies shall:

- Notify the ALUC at least 45 days in advance, of their intent to overrule any ALUC non-consistency determination including a copy of their proposed decision and specific findings.
- Notify the ALUC if and when the local agency overrules any ALUC non-consistency determinations.

### **ATTACHMENTS:**

- Diridon Station Area Plan Amendment\_ALUC\_Referral (PDF)



103914

**DATE:** December 16, 2020

**TO:** Airport Land Use Commission

**FROM:** Mark Connolly, Senior Planner / Deputy Zoning Administrator

**SUBJECT:** City of San Jose General Plan Amendment and Rezoning for the Downtown West project

### **RECOMMENDED ACTION**

Consider recommendations relating to a request from the City of San Jose for a General Plan Amendment and Rezoning for the Downtown West Project, within the Airport Influence Area of San Jose International Airport (SJC). (City of San Jose Planning File Nos. GP19-009, PDC19-039-multiple parcels)

Possible action:

- a. Find the General Plan Amendment and Rezoning consistent with the policies contained within the SJC Comprehensive Land Use Plans (CLUP).

OR

- b. Find the General Plan Amendment and Rezoning inconsistent with the policies contained within the SJC CLUP.

### **REASONS FOR RECOMMENDATION**

The project includes multiple parcels and includes General Plan Amendments, a Planned Development Rezoning, Planned Development Permit, Historic Landmark boundary Amendments, Historic Preservation Permit, and Vesting Tentative Map. However, only the General Plan Amendment and Rezoning are mandatory referrals to the ALUC. The Vesting Tentative Map is for the subdivision of airspace for condominium purposes, as well as to adjust right-of way boundaries. However, it is what the General Plan Amendment and Rezoning allows on those subsequent lands that is subject to the SJC CLUP policies. The other processes do not affect aviation land use, either because they are administrative, such as a boundary amendment, or do not have associate specific development included.

Pursuant to State Law, anytime a General Plan Amendment or Zoning Amendment is proposed within the Airport Influence Area (AIA) of an adopted CLUP, a referral must be made to the County ALUC for a consistency determination. The City must refer the



application to the ALUC to provide a consistency determination with the appropriate CLUP policies prior to final approval.

Downtown West (“Project”) is an approximately 81- acre mixed-use plan located within the Diridon Station Area Plan (DSAP) boundary and General Plan Downtown Growth Area in the City of San José. The Project is seeking land use approvals including amendments to the General Plan, Planned Development Rezoning and a Planned Development Permit, including the Downtown West Design Standards and Guidelines (DWDSG) (file numbers GP19-009, PDC19-039 and PD19-029) among other related entitlements studied under the Draft Environmental Impact Report (DEIR).

The Diridon Station Area Plan (DSAP) is currently undergoing an amendment and is a separate referral to the ALUC, not considered with the subject referral.

Two areas of the project are located within the CLUP Airport Influence Area (AIA) for the Norman Y. Mineta San Jose International Airport and subject to this referral: The portion north of West Santa Clara Street, and the portion east of South Montgomery Street and north of West San Fernando Street.

Although not entirely within the SJC AIA, the overall project would allow the development of up to 7,300,000 gross square feet (GSF) of office space; up to 5,900 residential units; up to 500,000 GSF of active uses, which may include retail, cultural, arts, etc.; up to 100,000 GSF of event space; up to two central utility plants totaling approximately 130,000 GSF; hotels up to 300 rooms; up to 800 rooms of limited-term corporate accommodations; and approximately 15 acres of open space. The project also proposes infrastructure, transportation, and public area improvements, as well as a customized infrastructure, utility, mobility and public spaces. The project site is approximately 80 acres, and extends approximately one mile from north to south and is bounded by: Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, State Route 87, South Autumn Street, and Royal Avenue to the east; Auzerais Avenue to the south; and the Caltrain rail corridor to the west. As can be seen on Figure 2 of the referral package, approximately half of the project area is within the Airport Influence Area (AIA) of San Jose International Airport (SJC).

In addition to the proposed General Plan Amendment and Rezoning and unique to the subject project, the project incorporates Downtown West Design Standards and Guidelines (DWDSG) that affect aviation land use, such as heights and density. These design guidelines will be written into the City’s Zoning Ordinance for projects in the Downtown West area. When future specific development is proposed the City will evaluate the project for consistency with the guidelines through the Planned Development Permit process.

### General Plan Amendment

As can be seen on Figures 2 and 3 of the referral, the General Plan Amendment of the project entails amending the existing General Plan designations of Transit Employment Center, Public / Quasi Public, Downtown, Commercial Downtown and Open Space to Downtown and Commercial Downtown, to allow for the mixed commercial, office, retail and residential development proposed in the plan.

## Rezoning

The purpose of the Rezoning ( PDC19-039) is to incorporate the proposed Design Guidelines into the Zoning Ordinance for the project area. This also prescribes the heights of the buildings. The referral states the following proposal related to height:

“Maximum building heights for individual buildings in the Downtown West PD Zoning District may be increased without amendment to this General Development Plan provided that: (a) such increase correlates to an increase in maximum allowable height authorized by the FAA and approved by City Council following Santa Clara County Airport Land Use Commission review, if applicable; and (b) the Planning Director conducts environmental review of the building’s proposed height increase to determine compliance under CEQA. Documentation of any height increase pursuant to this section shall be through the Zoning / Design Conformance Review process described on Sheet 8.01.”

Development density and intensity can vary significantly in the project area based on the nature of specific uses likely to occur. However, the project does not propose specific development. Future development will be evaluated through the City’s Planned Development Permit process, which is only being included in the project to create the specific development review path for future development.

The following is an analysis of the consistency of the proposed Downtown West (“Project”) with the San Jose International Airport Comprehensive Land Use Plan (CLUP) policies. The analysis specifically focuses on what the General Plan Amendment and Rezoning allows.

### **Safety:**

Safety of people on the ground and in the air and the protection of property from airport-related hazards are among the responsibilities of the Airport Land Use Commission. The 2002 Caltrans Handbook presents guidelines for the establishment of airport safety areas in addition to those established by the FAA.

Airport safety zones are established to minimize the number of people exposed to potential aircraft accidents in the vicinity of the Airport by imposing density and use limitations within these zones. The safety zones are related to runway length and expected use.

As can be seen on Figure 5 of the referral “Safety Zones”, the project area is located outside of all safety zones for SJC. Therefore, none of the SJC CLUP safety policies apply.

### **Noise:**

The SJC noise contours use CNEL for depicting noise disruption from aviation activity, due to the penalty added during nighttime activities where aviation noise disruption could affect people the most. The SJC CLUP uses 65, 70 and 75 decibel CNEL noise contours and includes different noise mitigation based on the type of use exposed to aviation noise.

As can be seen on Figure 4 “Noise Contours 2027 forecast”, the project area is between the 60 and 65 dBA CNEL noise contours. The General Plan Amendment would allow Employment Commercial, residential and retail uses within both CNEL noise contours.

According to Table 4-1 of the SJC CLUP, Office Buildings, business commercial, professional and retail uses are “Generally Acceptable”.

However, residential uses are “Generally Unacceptable” between the 65-70 dBA CNEL Noise Contours. Table 4-1 of the SJC CLUP states:

*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.*

Also, 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.)*

Interior noise insulation and insulated fenestration would be required by the City, but the outdoor areas associated with residential development would be exposed.

City of San Jose General Plan and Zoning Code currently include the following “Safe Airport” policies:

### **Goal TR-14 – Safe Airport**

- Ensure that airport facilities in San José are safe by removing potential conflicts between land use and airport operations.

### **Policies – Safe Airport**

- TR-14.1 Foster compatible land uses within the identified Airport Influence Area overlays for Mineta San José International and Reid-Hillview airports.
- TR-14.2 Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
- TR-14.3 For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San José International and Reid-Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
- TR-14.4 Require avigation and “no build” easement dedications, setting forth maximum elevation limits as well as for acceptance of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.

These policies are intended to be used to evaluate projects within the AIA of SJC to ensure aviation land use safety and General Plan consistency. Future specific land use proposals would be evaluated by City staff and these policies used to ensure project consistency with the General Plan and Rezoning and ideally include conformance with these CLUP policies.

However, as there are no specific policies within the General Plan Amendment, Rezoning, Design Guidelines, or existing Safe Airport policies, that would prohibit residential outdoor space within the 65 dBA CNEL contour.

A solution that is not proposed in the Downtown West project could be if the City agreed to add language into the General Plan Amendment, or Rezoning Design Guidelines that precluded residential outdoor space within the 65 dBA CNEL. If such language is not included, the Downtown West project would be inconsistent with the SJC CLUP noise policies.

### **Height:**

Airport vicinity height limitations are required to protect the public safety, health, and welfare by ensuring that aircraft can safely fly in the airspace around an airport. This protects both those in the aircraft and those on the ground who could be injured in the event of an accident. In addition, height limitations are required to protect the operational capability of airports, thus preserving an important part of National and State aviation transportation systems.

Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, establishes imaginary surfaces for airports and runways as a means to identify objects that are obstructions to air navigation. Each surface is defined as a slope ratio or at a certain altitude above the Airport elevation. The ALUC uses the surfaces as height restriction boundaries.

Figure 6 of the referral shows “existing heights / OEI”, but is actually the FAA FAR Part 77 surfaces. Figure 7 shows the Terminal Instrument Procedures (TERPS) surfaces. And Figure 7 shows the ground elevations. In June of 2020, the San Jose City Council adopted TERPS as the height limitation surfaces for the area south of SJC.

The adoption of TERPS surfaces as a height standard allows heights that exceed the Part 77 surfaces by varying heights of 80-120 feet

As started earlier in the report, the Downtown West Design Standards and Guidelines (DWDSG) would be used for building height allowance up to TERP surface ceiling. This would equate to building heights approximately 295 feet tall from grade. All proposed heights proposed in the project would exceed the allowed heights and specific development could potentially exceed the FAR Part 77 Surfaces in the SJC CLUP, which are used by the ALUC as height restriction boundaries.

According to Section 20.70.200, the City of San Jose Zoning Ordinance, the height of structures within the Airport Influence Area (AIA) of SJC is as follows:

- Except as otherwise specified in this chapter, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport.
- No building or structure, together with any equipment or objects attached to such building or structure, shall be permitted of a height that exceeds the elevation restrictions prescribed under Federal Aviation Regulations Part 77 (14 C.F.R. Part 77), as amended, unless the proposed height is specifically reviewed in an aeronautical study prepared by the Federal Aviation Administration in accordance with such federal regulations and the study concludes that the proposed building or structure does not constitute an obstruction or hazard to air operations.

Notwithstanding the Safe Airport policies and the above ordinance language, the Downtown West General Plan Amendment and Rezoning would allow heights in conflict with the Part 77 surfaces and SJC CLUP height policies. Therefore, the General Plan Amendment and Rezoning are inconsistent with the SJC CLUP height policies.

### **Avigation Easement:**

Avigation Easements provide notice to future owners and occupants of buildings that there will be aviation activity around them. Avigation Easements are important disclosures both for the public and airport operators to ensure aviation activity is taken into consideration.

SJC CLUP policy G-5 states: “Where legally allowed, dedication of an avigation easement to the City of San Jose shall be required to be offered as a condition of approval on all projects located within an Airport Influence Area, other than reconstruction projects as defined in paragraph 4.3.7 [of the CLUP]. All such easements shall be similar to that shown as Exhibit 1 in Appendix A [of the CLUP].”

The General Plan Amendment nor the Rezoning, propose any specific development. The Planned Development Permit is procedural process for future development. The Historic Landmark boundary Amendments would simply amend a boundary, the Historic Preservation Permit is needed to amend that boundary, and Vesting Tentative Map is for subdivision of airspace for condominium purposes. Therefore, at the time of specific development proposals to the City of San Jose, City Planning Staff will require Avigation Easements as a condition of all such development. These easements shall be similar to the document contained in the CLUP appendix.

### **STEPS FOLLOWING ACTION:**

Following the consistency determination by the ALUC, staff will forward the recommendations to the City of San Jose to include in the final action of the City of San Jose Planning Commission and City Council. If the ALUC determines the General Plan Amendment and Rezoning are inconsistent with the SJC CLUP, the City may initiate the overrule process, which requires a two-thirds vote of the local agency’s governing body, supported by specific findings which demonstrate that the plan(s) satisfy the purposes of the State Aeronautics Act {PUC 21670 et seq} and guidance of the state’s Airport Land Use Planning Handbook.

Section 4.2.2.1 of the SJC CLUP (Override Notification Process) states that in the event of intent to override, the affected local agencies shall:

- Notify the ALUC at least 45 days in advance, of their intent to override any ALUC non-consistency determination including a copy of their proposed decision and specific findings.
- Notify the ALUC if and when the local agency overrides any ALUC non-consistency determinations.

**ATTACHMENTS:**

- Referral-Letter\_Downtown-West-Google-Project (PDF)
- Downtown West Airport Land Use Project Package (PDF)
- Downtown West Design Guideline Excerpt (PDF)