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Cc: [Downtown West Project](#)
Subject: Fw: City of San Jose Proposal to Overrule - GP19-009 and PDC19-039
Date: Tuesday, March 23, 2021 11:08:47 AM
Attachments: [5-San Jose GPA and Rezoning Overrule 2.19.21-3.22.21.pdf](#)

Best,
Tong (John) Tu

Planner IV (Supervising Planner) | Planning Division | PBCE
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From: Fiore, Robert A@DOT <robert.fiore@dot.ca.gov>
Sent: Tuesday, March 23, 2021 11:00 AM
To: Tu, John <john.tu@sanjoseca.gov>
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Subject: City of San Jose Proposal to Overrule - GP19-009 and PDC19-039

[External Email]

Hello Mr. Tu:

Caltrans Division of Aeronautics is currently emailing official correspondence. Attached is correspondence from Caltrans Division of Aeronautics that is addressed to you.

Thank you

ROBERT FIORE
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Making Conservation
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March 23, 2021

Mr. Tong (John) Tu, Supervising Planner
Planning, Building and Code Enforcement
Planning Division
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Electronically Sent
john.tu@sanjoseca.gov

Dear Mr. Tu:

The California Department of Transportation (Caltrans), Division of Aeronautics (Division) received a proposed overrule by the city of San Jose (City), in accordance with California Public Utilities Code (PUC) section 21676(a), on February 19, 2021. In accordance with PUC section 21676(a)ⁱ, 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)ⁱⁱ for Norman Y Mineta San Jose International Airport (SJC). In accordance with PUC section 21675, the SJC CLUP contains height restrictions on buildings, specifies use of land, and determines building standards, including soundproofing adjacent to airports, within the airport influence area.

The proposed overrule involves a General Plan Amendment (Envision San José 2040 and Diridon Station Area Plan) and rezoning to a DC(PD) Planned Development Zoning Districtⁱⁱⁱ. This involves the City processing a proposed General Plan Amendment (GPA) and Planned Development Rezoning File Nos. GP19-009 and PDC19-039 to the Santa Clara County Airport Land Use Commission

ⁱ PUC 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).

ⁱⁱ PUC 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.

ⁱⁱⁱ The project consist of 5,900 residential units; ~7,300,000 square feet of office space; ~500,000 GSF square feet of retail, cultural, arts, and civic type uses; ~300 hotel rooms; ~800 rooms of limited-term accommodations; event and conference centers of ~100,000 GSF; ~approximately 15 acres of open space; and other accessory uses.

(SCCALUC) for a consistency determination with policies contained in the SJC CLUP.

On December 16, 2020, the SCCALUC found the proposed GPA and Rezoning inconsistent with the policies of safety, height, and noise contained within the SJC CLUP. The GPA and Rezoning were determined to be inconsistent with the SJC CLUP policies, Table 4-1, Policy N-4 and Policy H-1.

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 relevant to the SCCALUC's specific inconsistency determination and has determined the proposed findings are not consistent with the declaration and purposes of the statutes set forth in PUC section 21670 and with the foundational principles contained in the California Airport Land Use Planning Handbook (Handbook)^{iv}

The City's resolution includes a finding that pertains to SJC CLUP Policy N-4. The City's finding states that "analysis shows that the Year 2027 65 decibels (dB) Community Noise Level Equivalent (CNEL) noise contour extends into several blocks on the project site that the Downtown West Project would designate for residential or hotel use." "Although the project is proposing the above type of development in the 65 dB CNEL noise contour, the City finds the project is consistent with Section 21670." In support of their noise finding, the City listed reasons why the noise finding is consistent with PUC section 21670.

The Division finds that Goal EC-1 of the Envision San José General Plan 2040 is not consistent with the California Building Code and with ALUC Policy N-4. The California Building Code (Building Code) section 1207.11 (California Code of Regulations, Title 24) 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. Further, the Building Code states that a Noise Element be included as part of the local general plan and noise contours are to be included. 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. 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. In any case, an acoustical analysis for residential type uses prior to building permit issuance should be included as a condition of approval.

^{iv}PUC section 21674.7

The Division finds that the Envision San José 2040 General Plan, which identifies outdoor noise environments of 60-75 dBA DNL as “conditionally acceptable” for residential and hotel uses, if interior noise levels are mitigated to 45 dBA DNL, is not consistent with PUC section 21670. The City’s Envision San José 2040 General Plan is inconsistent with PUC section 21674.7(b)^v, PUC section 21675(a), the Handbook’s foundational principles and CLUP policy. The City’s finding 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); safeguard the inhabitants within the vicinity of airports (PUC section 21675(a)); the Building Code that establishes 65 dB CNEL as the maximum acceptable noise level for county designated noise-problem airports; and SJC CLUP Policy N-4, which states that “no outdoor patios or outdoor activity areas associated with the residential portion of a mixed use residential project or a multi-unit residential project.

The Division finds that residential exterior spaces within the 65 dBA DNL noise contour would be inconsistent with orderly development of SJC. The City’s finding is not consistent with the intent and declaration by the California Legislature in PUC section 21670(a)^{vi}, and PUC section 21676(a)^{vii}. The City’s finding does not provide for the orderly development of SJC (PUC section 21670(a)) because the SJC Master Plan noise analysis is not consistent with the SJC CLUP policies (PUC section 21676(a)).

The Division finds that the benefits of exterior spaces and where a person chooses to live is not a sufficient finding. It is the intent of the State Aeronautics Act (Act)

^v It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, structure, or facility, and before the construction of a new building, it is the intent of the Legislature that local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, to the extent that the criteria has been incorporated into the plan prepared by a commission pursuant to Section 21675.

^{vi} PUC 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.

^{vii} PUC 21676(a): Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan.

to ensure the orderly growth of airports and prevent new noise and safety problems, regardless of the benefits of exterior spaces and when people choose to live near an airport.

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 reason does not account for future conditions and does not prevent new noise and safety 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." The Division finds that FAA aeronautical studies are typically conducted upon submission of Title 14, Code of Federal Regulations (CFR) Part 77, "*Safe, Efficient Use and Preservation of the Navigable Airspace*" (Part 77), Form 7460-1, 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" for the proposed GPA and Rezoning policies and standards, it was not submitted with the proposed resolution and findings.

The City's resolution includes a finding that pertains to ALUC CLUP Policy H-1: "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, is presumed to be a hazard to air navigation and will be considered an incompatible land use, except..., 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." The Legislature enacted PUC sections 21402^{viii} and 21659(a)^{ix} for airspace protection purposes. According to the Act, CFR Part 77 is used as the primary airspace protection standard for the State. CFR Part 77 provides a static, evenly applied, and "mappable" basis for determining

^{viii}The 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.

^{ix}No 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.

height compatibility of structures or objects near an airport. The FAA regulates navigable airspace and established the CFR Part 77 process that requires project sponsors to inform FAA about proposed construction that could affect navigable airspace. FAA Determinations on an Airspace Study does not constitute an approval of a proposed project. Rather, it is a finding relative to CFR Part 77 surfaces surrounding an airport. Further, the provisions of PUC section 21670 (inclusive) reference CFR Part 77 for ALUCs use in airport land use compatibility planning and policy formation. CFR Part 77 is incorporated as part of the SJC Airport Master Plan, on which ALUC policies must be based (PUC Section 21675(a)*). The SCCALUC adopted their policies consistent with the Handbook's foundational principles.

The City resolution also includes a finding that states, that "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 natural features. It does not demonstrate that cumulative future conditions would ensure the orderly development of SJC or at a minimum maintain protection of SJC airspace. Such consequences may reduce the operating utility of SJC. It may be more appropriate for the FAA to conduct an aeronautical study that evaluates all potential development scenarios to best protect SJC and SJC's airspace.

The Division would like to reiterate the importance of protecting SJC. 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 hazard 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.

*The commission's airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years.

Mr. Tong (John) Tu
March 23, 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
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