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Cc: [Downtown West Project](#)
Subject: Resolution hearing doc
Date: Monday, April 19, 2021 1:43:18 PM
Attachments: [ALUC Override Draft Resolution Feb 19 2021 .docx](#)

Amanda,

Find attached the resolution that was referred to ALUC.

Best,

[Tong \(John\) Tu](#)

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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 REZONING OF APPROXIMATELY 79 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; NORTH MONTGOMERY STREET, LOS GATOS CREEK, THE GUADALUPE RIVER, STATE ROUTE 87, BARACK OBAMA BOULEVARD, AND ROYAL AVENUE TO THE EAST; AUZERAIS AVENUE TO THE SOUTH; AND THE CALTRAIN RAIL CORRIDOR AND CAHILL STREET 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 PROJECT IS INCONSISTENT WITH THE ALUC NOISE AND HEIGHT POLICIES AS DEFINED BY THE "COMPREHENSIVE LAND USE PLAN FOR SAN JOSE INTERNATIONAL AIRPORT"

FILE NOS. GP19-009 AND PDC19-039

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. GPA19-009) and Planned Development Rezoning (File No. PDC19-039) 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 Downtown West project falls within the ALUC's Airport Influence Area surrounding Mineta San José International Airport; and

WHEREAS, the project is for a General Plan Amendment (Envision San José 2040 and Diridon Station Area Plan) and rezoning to a DC(PD) Planned Development Zoning District to bring forward a plan that reflects the objectives represented by the City, stakeholders, and residents of San Jose in an inclusive and extensive public process; and consists of up to 5,900 residential units; up to 7,300,000 gross square feet (GSF) of

office space; up to 500,000 GSF of active uses such as retail, cultural, arts, civic etc.; up to 300 hotel rooms; up to 800 rooms of limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 GSF; up to two central utility plants totaling approximately 130,000 GSF; logistic/warehouse(s) totaling approximately 100,000 GSF and approximately 15 acres of open space, all on approximately 79-gross acres in the area generally 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, Barack Obama Boulevard, and Royal Avenue to the East; Auzerias Avenue to the South; and the Caltrain Rail Corridor and Cahill Street to the West; and

WHEREAS, on December 16, 2020, the ALUC, acting pursuant to its authority under Section 21676, determined that GP19-009 and PDC19-039 were inconsistent with ALUC noise and height policies, as defined in the “Comprehensive Land Use Plan for San José International Airport” (CLUP); and

WHEREAS, ALUC found the rezoning and general plan amendment would be inconsistent with the CLUP Noise Policy N-4 and Table 4-1 because a portion of the site would permit residential outdoor patios or outdoor activity areas within the CLUP’s 65 A-weighted decibels (dBA) Community Noise Equivalent Level (CNEL) noise contour, and the ALUC CLUP discourages residential uses with outdoor patios or outdoor activity areas within the 65 dba CNEL noise contour; and

WHEREAS, ALUC found the proposed rezoning and general plan amendment were also inconsistent with the CLUP H-1 height policy, as the project may propose building heights that exceed FAR Part 77 Surfaces. The CLUP height policy references FAR Part 77 Surfaces to determine compatible land uses in the Airport Influence Area; and

WHEREAS, the ALUC made its Land Use Plan inconsistency determination prior to the FAA’s issuance of any “No Hazard” determination for the subject project; and

WHEREAS, if a project exceeds FAR Part 77 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 project to be consistent with the CLUP except for noise and height as described above; and

WHEREAS, the ALUC determined that the subject site is located outside of the outer safety zone (OSZ) and none of the safety policies contained within the CLUP are applicable to this proposed project; 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 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

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

SECTION 1. Section 21676 provides that a local governmental body may overrule the ALUC’s determination if it makes specific findings that the proposed local government body’s action is consistent with the purposes of California Public Utilities Code (CPUC)

Section 21670. The City Council hereby makes the following overriding findings with regard to 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 first purpose of Section 21670 is to provide for the orderly development of each public use airport in the state and the area surrounding these airports so as to promote the overall goals and objectives of California airport noise standards and prevent the creation of new noise and safety problems. The second 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 subject property is not located within any of the Safety Zones for the Mineta San José International Airport. Therefore, none of the CLUP safety policies are applicable to the proposed project.
- D. Consistent with the purposes of Section 21670, the City's General Plan, development review process and methodology ensure that future development within the Airport Influence Area on the project site would minimize the public's exposure to excessive noise and that buildings will be constructed only if their heights and other characteristics result in FAA Determinations of No Hazard to Air Navigation.
- 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 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 dBA CNEL noise contour, the project is consistent with 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. See project EIR Mitigation NO-3, which will be a condition of approval of the project's Planned Development Permit.
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 of the project's Planned Development Permit, 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 to the project's Planned Development Permit.
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 at Downtown West Blocks E3 and C3 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 Block E3 and C3 exceed 65 dBA CNEL, but these conditions are primarily due to highway, rail and street noise rather than aircraft. (Downtown West Mixed Use Project DEIR Table 3.10-1).

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 Jose 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 Jose (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. 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 Jose 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, 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.

The project is in compliance with General Plan Transportation Policy TR14.2 in that if the City Council approves the proposed rezoning and general plan amendment, a condition of approval will be included in the Planned

Development Permit requiring a “Determination of No Hazard” to Air Navigation be issued by the FAA for all buildings prior to issuance of any building permits.

SECTION 2. Therefore, based upon the findings set forth above, the City Council hereby finds that the development proposed under Planned Development Rezoning File No. PDC19-039 and General Plan Amendment GP19-009 is 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 Planned Development Rezoning File No. PDC19-039 and GP19-009 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