

County of Santa Clara
Airport Land Use Commission



DATE: March 24, 2021, Regular Meeting
TIME: 6:00 PM
PLACE: By Virtual Teleconference Only

MINUTES

Opening

1. Call to Order/Roll Call.

Chairperson Windus called the meeting to order at 6:00 p.m. A quorum was present via teleconference, pursuant to the provisions of Executive Order N-29-20 issued on March 17, 2020 by the Governor of the State of California.

Attendee Name	Title	Status	Arrived
Walter Windus	Chairperson - Seat 1	Remote	
Diego Barragan	Commissioner - Seat 2	Absent	
Christina Johnson	Proxy Commissioner - Seat 2	Remote	
E. Ronald Blake	Commissioner - Seat 3	Remote	
Paul Donahue	Commissioner - Seat 4	Remote	
Keith Graham	Vice Chairperson - Seat 5	Remote	
Lisa Matichak	Commissioner - Seat 6	Remote	
Glenn Hendricks	Commissioner - Seat 7	Remote	

2. Public Comment.

One individual addressed the Commission.

On motion of Commissioner Hendricks, seconded by Commissioner Donahue, the Commission unanimously approved taking Item Nos. 6 and 7 out of order after Item No. 2.

Regular Agenda - Items for Discussion

3. Consider recommendations relating to a request from the County of Santa Clara relating to Ordinance amendments to Section 1.20.070 of the Zoning Ordinance of the County of Santa Clara, Appendix I (Zoning), regarding County and other public agency projects. Location: Countywide. (County of Santa Clara File No. PLN20-10-CWP) (ID# 105091)

Possible action:

- a. Find the Ordinance Amendments consistent with the policies contained within the Countywide Comprehensive Land Use Plan (CLUP).

OR

- b. Find the Ordinance Amendments inconsistent with the policies contained within the Countywide CLUP.

Taken out of order after Item No. 7.

Mark Connolly, Senior Planner, Department of Planning and Development (PLN), reported that the ordinance amendment affects all County leased lands, and provided information relating to the proposed land use and development exemptions, types of projects, and building permit application requirements.

Discussion ensued relating to the project review process and the building permit process.

Leza Mikhail, Principal Planner, PLN, clarified that the existing process will continue with various methods to initiate Airport Land Use Commission (ALUC) review.

In response to an inquiry from Chairperson Windus, Ms. Mikhail stated that PLN's permitting system does not have a mechanism that initiates an alert upon entering an Assessor's Parcel Number located within an Airport Influence Area (AIA) however PLN staff is very well trained to consider areas of importance when reviewing a project and the use of various systems that provide information for project referrals.

In response to an inquiry from Commissioner Hendricks, Ms. Mikhail clarified that all projects subject to ALUC review will continue to be subject to ALUC review and that the only process change is that certain types of project applications would not trigger ALUC review during the application process but would later.

Discussion ensued relating to the purpose of the amendment.

Chairperson Windus expressed concern that because applicants will not be informed that their plans do not comply with the CLUP until the building permit step, architectural and engineering work may have already begun. He further expressed concern that open air assemblies of people in a safety zone would not be subject to ALUC review because it does not require a building permit.

Mr. Connolly suggested that the Commission include a recommendation to the Board of Supervisors (BOS) that any projects within the AIA of the five airports have ALUC review to be included in the staff report for the Board.

In response to an inquiry from Commissioner Donahue, Mr. Connolly stated that County-owned land within a city jurisdiction and within an AIA would still require ALUC review.

Ms. Mikhail clarified that the ordinance only applies to County jurisdictions, not within a city boundary. She further noted that for County properties within city jurisdictional boundaries, the County is exempted from that city's zoning ordinance per State law. Mr. Connolly noted that CLUP policies will always apply within the five AIAs.

Commissioner Matichak made a motion to find the ordinance amendments consistent with the CLUP for properties outside of an AIA, but for properties within an AIA, projects will be referred to the ALUC during the planning application process rather than during the building permit application process. Commissioner Hendricks seconded the motion. Ms. Mikhail clarified that there is no planning application required through this zoning ordinance and noted that she does not anticipate planning projects being treated any differently than they are today. Discussion ensued relating to forming a motion that best addresses the Commission's concerns. Ms. Mikhail suggested that the motion indicate that County and local agency projects be subject to the zoning ordinance and noted that the motion would be presented when the ordinance amendments are considered by the BOS. Commissioner Matichak withdrew the motion.

On motion of Commissioner Hendricks, seconded by Commissioner Matichak, the Commission unanimously approved finding the ordinance amendments consistent with the policies contained with the CLUPs and forwarding a recommendation that the BOS provide improved clarifying language in the ordinance which indicates that County properties within an AIA will continue to be subject to the zoning ordinance.

3 RESULT: APPROVED [UNANIMOUS]

MOVER: Glenn Hendricks, Commissioner - Seat 7

SECONDER: Lisa Matichak, Commissioner - Seat 6

AYES: Windus, Johnson, Blake, Donahue, Graham, Matichak, Hendricks

4. Consider referral from the City of Santa Clara relating to the El Camino Real Specific Plan. (ID# 105138)

Possible action:

- a. Find the Specific Plan consistent with the policies contained within the San Jose International Airport (SJC) Comprehensive Land Use Plan (CLUP).

OR

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

Regarding safety and noise, Mr. Connolly reported that the site is outside of all noise contours and safety zones for SJC, therefore none of the CLUP noise and safety policies apply to the El Camino Real Specific Plan.

Regarding height, Mr. Connolly reported that the Plan allows a maximum height of 60 feet above grade, which would not conflict with the Federal Aviation Administration (FAA) Part 77 surface.

Mr. Connolly stated that staff recommends a condition be added to the Plan that prior to approval of project specific development within the Community Mixed-Use four-to-five story area, City staff shall check with the FAA to ensure a No Hazard Determination is

not required, and if a No Hazard Determination is required, one shall be obtained prior to the issuance of a building permit.

Mr. Connolly stated that staff recommends a requirement of an avigation easement dedicated to the City of San Jose on behalf of SJC.

Approved finding the El Camino Real Specific Plan consistent with the SJC CLUP with the condition that prior to approval of project specific development within the Community Mixed-Use four-to-five story area, City staff shall check with the FAA to ensure a No Hazard Determination is not required, and if a No Hazard Determination is required, one shall be obtained prior to the issuance of a building permit; and, the requirement that an avigation easement be dedicated to the City of San Jose on behalf of SJC.

4 RESULT: APPROVED [UNANIMOUS]

MOVER: Glenn Hendricks, Commissioner - Seat 7

SECONDER: Paul Donahue, Commissioner - Seat 4

AYES: Windus, Johnson, Blake, Donahue, Graham, Matchak, Hendricks

5. Consider Referral from the City of San Jose for a Zoning Amendment to Title 20 of the City of San Jose Zoning Code affecting San Jose International and Reid-Hillview Airports to create new zoning districts that set the standards for future development. (ID# 105143)

Possible action:

- a. Find the Zoning Amendment consistent with the policies contained within the San Jose International Airport (SJC) and Reid-Hillview Airport (RHV) Comprehensive Land Use Plans (CLUPs).

OR

- b. Find the Zoning Amendment inconsistent with the policies contained within the SJC and RHV CLUPs.

Mr. Connolly reported that the zoning ordinance amendment would create zoning districts located in urban villages in San Jose and affects both SJC and RHV.

Regarding safety, Mr. Connolly reported that none of the sites proposed for new zoning designations are within SJC or RHV safety zones and therefore none of the safety policies contained within the CLUPs are applicable to the proposed zoning ordinance amendment

Regarding noise, Mr. Connolly reported that none of the sites proposed for new zoning designations are within SJC or RHV noise contours and therefore none of the noise policies contained within CLUPs are applicable to the proposed zoning ordinance amendment. He further noted that residential outdoor patios would be discouraged and that indoor mitigation is required pursuant to the policies in the CLUPs.

Regarding height, Mr. Connolly stated that the text amendment intends to separate out properties within the Diridon Station Area Plan (DSAP) as the Plan dictates its own height boundaries. He further advised of a couple of transit residential areas that would allow building height up to 270 feet and noted that proposals for specific development are subject to FAA review. Mr. Connolly further stated that a 270-foot building at the end of the runway would not be consistent with the CLUP height policies.

Discussion ensued relating to the Part 77 surface limit in the area north of downtown San Jose.

Martina Davis, Supervising Planner, City of San Jose, advised that the amendment proposes to include a statement within the zoning ordinance that states these zoning districts shall not be applied to areas within DSAP within the SJC AIA in an attempt to provide as much consistency as possible considering the uncertainty regarding heights in DSAP.

Brent Carvalho, Planner, City of San Jose, clarified that no rezonings are included in the ordinance amendment and noted that the intention is to create the development standards for future development. He further noted that future rezoning requests will be presented to the ALUC.

Commissioner Hendricks suggested the possibility of holding this referral to the next meeting to allow consideration of a proposal with improved clarity. Ms. Davis stated that delaying consideration would be problematic for San Jose as other projects are contingent upon the adoption of these zoning districts.

Vice Chairperson Graham noted that there are no specific projects planned for these areas and when projects arise, they will be subject to ALUC consideration.

Approved finding the Zoning Amendment consistent with the policies contained within the SJC and RHV CLUPs with the exception of the DSAP properties within the SJC AIA.

5 RESULT:	APPROVED AS AMENDED [6 TO 1]
MOVER:	Keith Graham, Vice Chairperson - Seat 5
SECONDER:	Christina Johnson, Proxy Commissioner - Seat 2
AYES:	Windus, Johnson, Blake, Donahue, Graham, Matichak
NAYS:	Hendricks

- 6. Provide comments relating to the proposed decision and findings by the City of San Jose to overrule the December 16, 2020 County of Santa Clara Airport Land Use Commission (ALUC) determination for the Downtown West Mixed-Use General Plan Amendment and Rezoning project and direct County staff to forward ALUC comments to the City of San Jose. (ID# 105155)**

Taken out of order after Item No. 2.

Mr. Connolly provided an overview of the overrule process and noted that the purpose of this item is to allow an opportunity for the Commission to provide comments relating to the overrule findings provided by the City of San Jose.

Chairperson Windus commented that Finding E4 is a potential violation of a court-ordered settlement agreement and noted that he feels the last sentence of the finding which states that the areas are exempt from the 65 decibel Day-Night Average Sound Level (DNL) exterior noise limit is not applicable.

Commissioner Hendricks suggested that the ALUC respond by reiterating the action taken by the ALUC and noted that Finding C is unnecessary, Finding E3 is not relevant to ALUC's decision, Finding E5 ensures consistency with the DNL noise contour however it is not consistent with the noise policies in the CLUP, Finding F indicates that the FAA will make final height consistency determination, however it is still inconsistent with the CLUP, and that Finding E7 is only true if outside space noise is not excessive.

Commissioner Donahue noted the irrelevance of Finding E5 indicating the consistency of exterior spaces with the Airport Master Plan and questioned whether outdoor noise will be considered in the review process described in Finding D. He further noted that the fourth Whereas in the proposed resolution indicates that the CLUP discourages outdoor activities in the 65 decibel Community Noise Equivalent Level (CNEL) contour, however the CLUP prohibits it.

Chairperson Windus noted that many of the recitals in the document are unrelated to the reasons that the ALUC found the referral inconsistent.

Commissioner Matichak expressed concern that the response to the overrule was due on March 20, 2021. Lizanne Reynolds, Deputy County Counsel, clarified that although it is past the due date, ALUC's comments will be submitted before the project is considered by San Jose City Council. Commissioner Hendricks expressed concern that the City may have deliberately submitted the overrule to ALUC in such a way that would limit the ALUC's ability to respond timely and requested that this be noted in the response.

Ms. Reynolds provided information relating to the statutory provisions in the Public Utilities Code (PUC) Section 21670 that govern overrules and advised the ALUC to consider whether the City's proposed findings are consistent with the relevant statutory provisions when forming a motion.

Chairperson Windus expressed the need for clarification of Finding E7 and noted that the last sentence of that finding is both irrelevant and untrue. He further noted that Finding E8 justifies the use of outdoor balconies, however, he feels that the analysis is insufficient and expressed the need for surveys conducted by a neutral party.

Commissioner Hendricks expressed the need to survey downtown San Jose residents who live within a 65-decibel noise contour instead of surveying all downtown San Jose residents.

Ms. Reynold reported that the previously mentioned settlement agreement indicates that the City of San Jose agreed to dismiss its lawsuit in exchange for the ALUC changing certain provisions in the CLUP and noted that there was no agreement for the City to incorporate that into its general plan.

Commissioner Donahue clarified that it is not required that the findings be consistent with the CLUP but only with the goals of the CLUP.

The Commission directed staff to write an appropriate response to the overrule which will be reviewed by Chairperson Windus; will indicate that the findings the City presented are insufficient and not factual; will include all the comments made on the various points discussed in this item which will be formatted appropriately; will include that the findings are inconsistent with the two articles of the PUC referenced by Counsel; will reference Proxy Commissioner Holbrook's comments relating to the change from the FAA regarding noise; will include concerns relating to the timing of overrule submittals; and, to request that the City follow the appropriate process to modify the CLUP rather than requesting exceptions.

Commissioner Hendricks requested that the record indicate that City of San Jose staff was not present at the meeting to discuss the comments made.

6 RESULT: APPROVED [UNANIMOUS]

MOVER: Glenn Hendricks, Commissioner - Seat 7

SECONDER: Lisa Matichak, Commissioner - Seat 6

AYES: Windus, Johnson, Blake, Donahue, Graham, Matichak, Hendricks

7. Provide comments relating to the proposed decision and findings by the City of San Jose to overrule the December 16, 2020 County of Santa Clara Airport Land Use Commission (ALUC) determination for the Diridon Station Area Plan Amendment and Rezoning project and direct County staff to forward ALUC comments to the City of San Jose. (ID# 105213)

Mr. Connolly advised that the purpose of this item is to allow an opportunity for the Commission to provide comments relating to the overrule findings provided by the City of San Jose.

Commissioner Hendricks commented that he disagrees with Section 2 of the resolution which indicates the findings are not in conflict with PUC 21670.

Discussion ensued relating to the City of San Jose being inconsistent with its own general plan by using Terminal Instrument Procedures (TERPS), and the letter received from California Department of Transportation (Caltrans) Division of Aeronautics clearly indicating that the City is in breach of PUC 21670.

Discussion ensued relating to the use of Part 77 versus using TERPS.

The Commission authorized staff to draft a letter in response to the overrule in collaboration with Chairperson Windus which will include the topics and concepts

addressed in Item No. 6, comments relating to the City's general plan, comments relating to Section 2 of the resolution, the letter from Caltrans Division of Aeronautics, and indicate that the ALUC must use Part 77 surfaces as a height restriction boundary.

7 RESULT: APPROVED [UNANIMOUS]

MOVER: Glenn Hendricks, Commissioner - Seat 7

SECONDER: Lisa Matichak, Commissioner - Seat 6

AYES: Windus, Johnson, Blake, Donahue, Graham, Matichak, Hendricks

8. Discuss and approve Airport Land Use Commission Work Plan for Fiscal Year July 1, 2021 through June 30, 2022 (FY 2021-2022) and Accomplishments for FY 2020-2021, to be submitted to the Clerk of the Board by April 1, 2021, and subsequently forwarded to the Board of Supervisors through the Housing, Land Use, Environment, and Transportation Committee. (ID# 105171)

Taken out of order after Item No. 5.

Mr. Connolly provided an overview of the proposed FY 2021-2022 work plan.

8 RESULT: APPROVED [UNANIMOUS]

MOVER: Paul Donahue, Commissioner - Seat 4

SECONDER: E. Ronald Blake, Commissioner - Seat 3

AYES: Windus, Johnson, Blake, Donahue, Graham, Matichak, Hendricks

9. Discuss 2021 Comprehensive Land Use Plans amendments.

Mr. Connolly advised of recent discussion relating to plans to conduct a noise study to develop noise contours rather than using the SJC-adopted noise contours, and noted the ability to utilize the services of an on-call consultant. He further noted that the next step is collaboration with Chairperson Windus to develop the scope of work and deliverables to submit to the consultant.

Chairperson Windus advised that strategy is to develop new noise contours based on aircraft types and noise generation features identified in the SJC airport master plan and to expand the time interval of operation to include the maximum runway capacity for the 17 hours the airport is in operation.

Discussion ensued relating to the noise study process, inclusion of the new FAA's Neighborhood Environmental Survey, the timeframe for developing a new noise model, potential challenges associated with the plan, the possibility of using other data to complement the study, whether other agencies would support a new noise model, whether lead studies are considered during safety zone evaluations, and potential difficulties associated with a noise model based on a 17-hour maximum runway capacity.

9 RESULT: RECEIVED

10. Receive report from Chairperson relating to Commission activities. (Walter Windus)

No report was received.

10 RESULT: RECEIVED

11. Receive report from the Department of Planning and Development. (Mark Connolly)

Considered concurrently with Item No. 14.

Mr. Connolly reported that County employees are expected to continue to work remotely at least until fall 2021.

Mr. Connolly advised of efforts to resolve the issue with the building that was recently developed near San Martin Airport that was not reviewed by the ALUC and noted that a fast food restaurant is proposed near RHV.

11 RESULT: RECEIVED

12. Receive report from Airport Planner, San Jose International Airport. (Ryan Sheelen)

Mr. Connolly advised of recent increase of air traffic at SJC and noted that it has reached the highest level since the onset of the COVID-19 pandemic.

12 RESULT: RECEIVED

13. Receive report relating to plans for the future of Reid-Hillview Airport pursuant to actions taken by the Board of Supervisors. (Ken Betts)

No report was received.

14. Receive report from Assistant Director of County Airports. (Ken Betts)

Considered concurrently with Item No. 11.

14 RESULT: RECEIVED

15. Receive report from Moffett Federal Airfield representative. (David Satterfield)

Mr. Connolly reported that a current aviation easement is awaiting signature.

15 RESULT: RECEIVED

16. Receive report relating to Palo Alto Airport. (Mark Connolly)

Mr. Connolly advised of development in East Palo Alto and noted that Phase 3 of the apron rehabilitation at Palo Alto Airport should be completed by mid-summer 2021.

16 RESULT: RECEIVED

17. Propose future agenda items.

Chairperson Windus suggested that the April 2021 agenda include an item relating to CLUP amendments with more specifics and the ability for potential motions.

Announcements**18. Announcements and correspondence:**

- a. Commissioners' announcements.

No announcements were made.

- b. Reminder: Annual Form 700 Statements of Economic Interests are due April 1, 2021.

- c. There are currently no vacancies on the Commission. For internet access to the vacancies list and applications, please visit www.sccgov.org/vacancies.

- d. The County of Santa Clara provides reimbursement to appointed Commissioners for family care expenses incurred during the time spent performing their official County duties. For additional information please contact the Office of the Clerk of the Board at (408) 299-5001.

Adjourn**19. Adjourn to the next regular meeting on Wednesday, April 28, 2021 at 6:00 p.m. in Room 157, County Government Center, 70 W. Hedding Street, San Jose, or by virtual teleconference.**

Chairperson Windus adjourned the meeting at 9:33 p.m.

Respectfully submitted,

Jean Anton

Deputy Clerk