

March 14, 2023

VIA EMAIL AND US CERTIFIED MAIL

Carl Hilbrants, Senior Planner
County of Santa Clara
County Government Center
70 West Hedding Street; East Wing, 7th Floor
San José, CA 95110

RE: City of San José comments on proposed amendment to the SJC CLUP Airport Influence Area (AIA) and associated Initial Study/Negative Declaration

Dear Mr. Hilbrants,

The City of San José (City) has reviewed information relating to the proposed amendment to the SJC CLUP Airport Influence Area (AIA) and associated Initial Study/Negative Declaration. The City submits the following comments and significant concerns regarding the CEQA process, the CLUP amendment process, and the proposed AIA amendment itself. The City requests the Airport Land Use Commission (ALUC) defer the hearing on the Initial Study/Negative Declaration until County ALUC staff have addressed all comments in this letter, provided the requested analysis and required coordination with the City, and re-circulated the CEQA document and proposed CLUP amendment.

INITIAL STUDY/NEGATIVE DECLARATION COMPLIANCE WITH CEQA

The Initial Study/Negative Declaration fails as a public disclosure document under California Environmental Quality Act (CEQA) because it lacks a complete and accurate project description. Further, the analysis includes incorrect use of data and modeling, and lacks justification. Absent an adequate project description and analysis, the City cannot conduct a thorough review of the project's potential environmental impacts related to the proposed amendments to the AIA, nor can we evaluate the scale of potential changes to the City's General Plan and development review process as a result of the proposed amendments.

The Initial Study/Negative Declaration does not include a Notice of Intent with key requirements for public circulation pursuant to CEQA Guidelines Section 15072(g). This includes the start and end dates of the public review period and the addresses of locations where the documents can be viewed (including the location posted on the Internet).

The Draft Initial Study/Negative Declaration was not properly circulated to City staff. County of Santa Clara (County) staff have been verbally reporting updates on progress at monthly ALUC meetings, with no material shared in agenda packets for review or comment since November 2021. While one member of City staff received a copy of the Initial Study Negative Declaration on December 7, 2022, during a meeting between a member of County ALUC staff and City staff on January 9, 2023, the Initial Study/Negative Declaration was not discussed. The meeting took place after the comment period closed for the Initial Study/Negative Declaration. Furthermore, the City has found no evidence that noticing requirements pursuant to Section 15072 of the

CEQA Guidelines have been followed. The City did not receive mailed copies of the Notice of Intent and could not find evidence a Notice of Intent was posted in a newspaper of record. The City requests County ALUC staff immediately provide a copy of all required notices and postings. Further, the County shall revise the environmental documents in compliance with CEQA and re-circulate the Initial Study/Negative Declaration pursuant to the noticing requirements of Section 15072 of the CEQA Guidelines.

The City's specific comments regarding the Initial Study/Negative Declaration are detailed below:

1. 2020 Airport Master Plan Environmental Impact Report (EIR) 2037 Combined Noise Equivalent Level (CNEL) Noise Contours

Pg. 1, Paragraph 3 (Project Description): Paragraph references the Noise Assessment in SJC's Airport Master Plan EIR. The horizon year analyzed in the report is 2037 not 2040. The City requests a copy of the noise contours that the proposed AIA is based on to compare them to the 2037 CNEL noise contours, as the portion of the AIA that covers the City has grown significantly in size and shrank significant in size in the City of Santa Clara without any analysis to support this increase.

2. Illegible and Incomplete Graphics

Pg. 2: Graphic "Environmental Setting and Surrounding Land Uses" is illegible, does not include a figure number, and does not show changes proposed in the southern part of the AIA. Please provide a legible graphic which shows the entirety of the proposed changes.

Pg. 3: Graphic "San Jose International Airport – Area". The figure is unlabeled; has no legend, labels, scale, or north arrow, and does not show the entire area covered by the proposed changes. The entire proposed AIA needs to be shown, not just a snapshot of Downtown San José. A larger map, or a map on several pages, which includes street names and parcels should be included so the City and members of the public can see the locations of the proposed changes.

3. Inaccurate or Relevant Noise Analysis

Pg. 1, Paragraph 5 (Project Description): Paragraph states "The proposed AIA boundary was developed pursuant to information provided within the BridgeNet International data sets and was prepared to be consistent with the Community Noise Equivalent Level (CNEL) contours and the Safety Zones noted within the Norman Y. Mineta San José International Airport Noise Assessment for the Master Plan Environmental Impact Report".

If, as stated above, the proposed AIA boundary was developed pursuant to the BridgeNet analysis included in the Noise Assessment for the 2020 Airport Master Plan EIR, the AIA in San José would decrease or stay the same size as the existing AIA. The 2037 65 dB CNEL noise contour in San José shrank in size from previous forecasts due to the change in aircraft fleet mix (newer and quieter aircraft).

4. Incorrect Use of Data and Modeling; Justification for Increase in AIA

Pg. 17, Paragraph 4, entitled “discussion,” states: “Conversely, approval of the proposed AIA boundary will remove CLUP protections for areas that are in the current AIA that will no longer be within the modeled 65 dB CNEL noise contour.”

Reference comment #3. The CEQA document states the noise contours and operational levels are based on the data in the 2020 Mineta San José International Airport Noise Assessment for the Master Plan EIR Noise Assessment, completed by BridgeNet. However, the proposed AIA adds CLUP protections for areas in the City that are not in the modeled 2037 CNEL noise contours.

Pg. 18, Paragraph 2, entitled “discussion,” states: “For the parcels south of the SJC airport that will be added to the proposed AIA, these will potentially benefit from the CLUP requirements to mitigate noise impacts for new projects within the 65 dB CNEL noise contour, resulting in a positive outcome by incorporating sound attenuation strategies and materials into new construction”.

The existing AIA boundary at Floyd Street between South 2nd Street and Vine Street already encompasses the 65 dB CNEL contour from the SJC 2037 CNEL noise contours. The proposed change expands the AIA beyond the 65 dB CNEL contour and disregards the data from the 2037 CNEL noise contours. The proposed change in the AIA provides no justification or explanation on why new projects that are located outside of the existing 65 dB CNEL noise contour are being added to the proposed AIA.

Pg. 19, Paragraph 3, entitled “discussion,” states: “within the City of San José, approximately 240 net acres of land will be added to the AIA. Included within the 240 acres are lands between Monterey Road (Highway) and Highway 87 near West Alma Avenue which are predominantly zoned Residential Neighborhood, Mixed Use Neighborhood, Heavy Industrial and Urban Residential along with limited areas zoned Open Space, Parklands, and Habitat (see Figures 1, 2 and 3 on Pages 2, 3 and 4 of this document). None of the parcels with the 65 dB CNEL contours would have any significant development-limiting impact after inclusion in the updated AIA. Currently, these areas are mostly fully developed or have zoning designations that limit development such that the SJC CLUP’s height and noise policies would not limit development. Future redevelopment of parcels in these areas with noise-sensitive land uses, such as schools, religious congregations, hospitals, auditoriums, and amphitheatres, would be discouraged but not prohibited.”

There is no figure 3 included in the document. The figure references and labels must be included.

Additionally, none of the additional acreages discussed in paragraph 3 falls within the 2037 65 dB CNEL noise contour. Given the distance from the Airport is such that City zoning designations already protect for height and noise restrictions, there is no justification for including the additional parcels within the amended AIA.

In order to comply with CEQA, the Initial Study and all supporting documents must be revised to address the comments above and re-circulated for public review prior to consideration by the ALUC.

CLUP AMENDMENT PROCESS COMMENTS

1. The CLUP Amendment Process Has Failed to Comply with the Stakeholder Consultation Requirements of State Law.

While City staff has not been provided with any draft amendments to the CLUP, the minimal project description provided in the CEQA document indicates that a CLUP amendment is being proposed. The City is the primary local jurisdiction that will be impacted by any proposed changes to the AIA.

- a) The City requests the ALUC to update the AIA in accordance with state law. The California Airport Land Use Planning Handbook Section 2.4.2, citing Public Utilities Code section 21675 (c), states that any amendment to the AIA requires preparation of a CLUP Amendment:

The review and amendment process which includes preparation of a draft ALUCP and environmental document, circulation for review and comment among affected agencies and the public, a noticed public meeting, incorporation of comments, and adoption by resolution of the ALUCP and its CEQA document. Coordination with local jurisdictions is important, particularly if the changes affect general and specific plan consistency with the ALUCP. – California Airport Land Use Planning Handbook, Section 2.4.2.

PUC Section 21675(c) states, “The Airport influence area shall be established by the commission after hearing and consultation with the involved agencies.” No such consultation and hearing with the City has occurred. When the project description is inadequate and misleading, as explained above, there can be no meaningful review and comment by affected agencies and the public. The documents must be revised to be consistent with the law and the relevant plans and studies, and recirculated.

The City has not been provided a Draft CLUP that incorporates the updated AIA boundaries (Section 3.7 of the CLUP discusses the bounds of the existing CLUP, while Figure 8 provides a visual representation). The City requests a Draft CLUP, including the bounds of the proposed AIA with sufficient time for meaningful review and comment prior to any ALUC hearing on the item.

Given the significant impacts the City will experience with the proposed AIA amendment, the County ALUC staff provided the absolute minimal amount of coordination and consultation with the City and the information provided to the City by ALUC staff was inadequate. When ALUC staff met with a member of City staff on January 9, 2023, ALUC staff represented the same misleading information described in the Initial Study that the proposed AIA amendment is being prepared to be consistent with the CNEL contours within the adopted Airport Master Plan. As discussed above, despite the CNEL contours shrinking in the City, the proposed AIA amendment would *increase* the AIA within San Jose by a net 240 acres, well beyond the adopted CNEL contours. Further, when City staff asked ALUC staff if an amendment to the CLUP was being proposed, County ALUC staff stated that they were not sure if the proposed AIA amendment required a CLUP amendment. The City cannot adequately respond to a proposal when such proposal is misrepresented and/or facts are omitted and/or there is no clear direction on the proposed action from ALUC.

- b) The City is the primary stakeholder for the SJC CLUP. Any proposed changes to the AIA that impact the City should be communicated and any conversations documented. Only one conversation was scheduled between County ALUC Planning Staff and City staff, and the Initial Study/Negative Declaration was also sent to one City Planning staff member.

2. The last major amendment to the CLUP was in 2011.

Public Utilities Code section 21675(a) states in relevant part, “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...” (see also California Airport Land Use Planning Handbook Section 1.3.1.) The Airport Master Plan and Airport Layout Plan was amended in April 2020 extending the horizon year and demand forecast to 2037, updating the layout and sizing of various landside facilities to adequately serve the projected 2037 demand, and adding airfield safety improvement projects (including the closure and removal of Runway 11/29 from the Airport Layout Plan) as a result of the 2015 Runway Incursion Mitigation (RIM) Study.

Despite these significant updates to the Airport Master and Layout Plans in 2020, the CLUP remains unchanged and does not reflect the current Airport plans. SJC’s Airport Layout Plan was approved in 2020 by the Federal Aviation Administration (FAA), but the CLUP still references the 2007 SJC Airport Layout Plan. The City requests the forthcoming CLUP amendment incorporate updates from the 2020 Airport Master Plan and Airport Layout Plan.

PROPOSED AIA AMENDMENT COMMENTS

1. Misleading project description & proposed AIA amendment

The description of the proposed AIA changes are misleading because the expansion of the AIA does not appear to be based on the 2037 CNEL noise contours from the SJC 2020 Airport Master Plan EIR, and no rationale is provided for the proposed AIA expansion.

While we wholly support policies and programs that ensure development is planned to avoid or mitigate conflicts with the Airport, this proposal also appears to arbitrarily increase the number

of actions that the City must refer to the ALUC. Given the expansion of the AIA in San Jose, more City projects will require referral to the ALUC with no justification for such an expansion of the ALUC role. The referral process can add months to the timeline for an action that requires an ALUC referral, and unnecessary referrals slow the City's work on adopting policies to address key issues such as the housing crisis. Any such change must be rational and accompanied by an appropriate analysis and evidence justifying the change.

2. Discrepancy between proposed AIA and adopted 2037 CNEL contours.

The stated purpose of this amendment to the AIA is to “ensure that CLUP land use measures that minimize public exposure to noise and safety hazards within areas surrounding SJC **align with the noise and safety boundaries in the new Airport Master Plan**” (emphasis added)¹. The noise study for the SJC Airport Master Plan EIR, completed and adopted by San José City Council in April 2020², shows that the 2037 CNEL noise contours south of SJC within the City shrank significantly in size from previous forecasts, due to the change in aircraft fleet mix and the introduction of newer and quieter aircraft. In comparison, the SJC CLUP uses noise contours that were prepared 20 years ago from the 2003 Norman Y. Mineta San José International Airport Master Plan Update Project³. The CLUP contours project noise analysis out to the year 2022 and are significantly larger in size than the current SJC 2037 CNEL noise contours. The proposed AIA boundary in the Initial Study/Negative Declaration adds an additional net 240 acres in San José, despite the Airport Master Plan 2037 CNEL noise contours shrinking in size.

Lastly, the California Business and Professions Code 11010(b)(13)(B) states “an “airport influence area,” also known as an “airport referral area”, is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses.”

Given the existing AIA boundary has been in place since 2011 and has been effective in providing safety, noise, and height protection for SJC, **the City proposes the ALUC adopt SJC's Master Plan EIR 2037 CNEL noise contours and retain the existing AIA boundary in the SJC CLUP (with only the removal of the Traffic Pattern and Runway 11/29 Turning Safety Zones)**. These safety zones are not required, as the completion of the Airport's 2015 Runway Incursion Mitigation (RIM) Study formally closed Runway 11/29. The significant reduction of the proposed AIA in Santa Clara provides less height protection (FAR Part 77, 7460 Determination of No Hazard, and Avigation Easements), which are critical to the Airport. The proposed changes to the AIA appear arbitrary, as they are not supported by the relevant studies.

Given the information provided, including the lack of a fully complete CEQA document, lack of meaningful and required stakeholder coordination on the CLUP amendment process, and

¹ Initial Study Environmental Checklist and Evaluation for the County of Santa Clara prepared for County File No. ALUC-22-003

² The Airport Master Plan and Airport Layout Plan update were in progress between 2018-2020 and were not impacted by the global COVID-19 pandemic.

³ Norman Y. Mineta San Jose International Airport Master Plan Update Project, Second Addendum to the Environmental Impact Report, Appendix A, Aircraft Noise Analysis

concerns with the proposed AIA amendment, it is apparent further review and analysis is necessary. We understand that you intend to place the AIA amendment on the March 22, 2023, ALUC agenda. The City requests the item be deferred and that County ALUC staff address the comments in this letter and provide the additional analysis and required coordination with the City, prior to recirculation of the Initial Study/Negative Declaration and proposed CLUP amendment. Please inform the undersigned of your intent with regard to addressing these deficiencies. We expect that this action will not be heard by the ALUC until these issues are addressed.

Sincerely,



Email: christopher.burton@sanjoseca.gov
Date: 07/16/2023 GMT
/S/

Chris Burton
Director of Planning, Building, Code Enforcement



Email: jaitken@sjc.org
Date: 07/16/2023 GMT
/S/

John Aitken, A.A.E.
Director of Aviation

cc: Jacqueline R. Onciano
Samuel Gutierrez
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031423 Final ALUC Letter

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