COUNCIL AGENDA: 6-5-07
ITEM: 10.2 (b)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 9, 2007

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: GP06-T-01. GENERAL PLAN TEXT AMENDMENT REQUEST TO INCREASE THE MAXIMUM ALLOWABLE BUILDING HEIGHT FROM 150 FEET TO 220 FEET ABOVE GROUND LEVEL ON AN APPROXIMATELY 6.08-ACRE SITE LOCATED AT THE SOUTHEASTERLY CORNER OF THE INTERSECTION OF AIRPORT PARKWAY AND OLD BAYSHORE HIGHWAY AND AMEND THE TEXT OF THE RINCON SOUTH SPECIFIC PLAN AS IT RELATES TO THE NORTH SAN JOSE AREA DEVELOPMENT POLICY (40, 50 AIRPORT PARKWAY).

RECOMMENDATION

The Planning Commission voted 6-0-0 to recommend deferral of the subject General Plan text amendment request to the next General Plan hearing cycle. The Planning Commission's recommendation is deemed a negative recommendation pursuant to San Jose Municipal Code Section 18.08.100.

OUTCOME

Deferral of the proposed General Plan text amendment would provide the City Council an opportunity to consider the Airport Obstruction Study and building height policies related to aviation needs of the Norman Y. Mineta San Jose International Airport prior to considering an increase in the maximum allowable building height on the subject site.

BACKGROUND

The City, in cooperation with the Redevelopment Agency, has undertaken an Airport Obstruction Study to determine how high-rise development in the Airport vicinity impacts airline service and to determine how to ensure that future development will not worsen current impacts. While the study notably focuses on high-rise construction in the Downtown area, it potentially will affect City policies related to appropriate building heights at other areas in proximity to the Airport or the Airport approach zones. To ensure consistency in setting policy for building heights in the Airport vicinity, the Director of Planning, Building and Code Enforcement recommended continuance of the

General Plan text amendment to allow the City Council to consider the Airport Obstruction Study prior to taking action on the subject proposal. The Planning Commission held a public hearing on May 2, 2007 to consider the proposed General Plan text amendment.

ANALYSIS

The Planning Commission discussion on May 2, 2007 primarily focused on the timing of future General Plan hearings and when the subject General Plan text amendment could be heard if deferred. Staff explained that the next General Plan hearing is potentially in the Fall, although no specific dates have been established. The expectation is that the City Council would have considered the Airport Obstruction Study and policies relating to building heights near the Airport by the next General Plan hearing.

Mark Foster, representing the owner and applicant, stated that the site is not within the study area of the Airport Obstruction Study. He stated that the subject site has sufficient distance to the airport runways and approach zones such that buildings on the site would not be affected in the event of an emergency. Mr. Foster stated that the Federal Aviation Administration (FAA) issued a No Hazard Determination for the subject proposal, and he cited staff's analysis supporting a Council decision to overrule the Airport Land Use Commission (ALUC) determination as reasons why the proposal should be approved. He also stated his concerns about the costs incurred during the development review process and stated that a deferral would translate to an approximately six-month delay. Mr. Foster expressed dissatisfaction with the Commission's decision to defer the item.

Chair Campos responded that there was consensus among the Commissioners that they were not comfortable making a decision on the proposal without vital information that is pending. Chair Campos asked for an explanation of the staff recommendation given that the site is located outside of the Airport Obstruction Study area. Staff stated that because the Airport Obstruction Study might result in height reductions in the Downtown and potentially affect building height policies at other areas in proximity to the Airport, the City Council should have an opportunity to consider and understand the context of allowable heights throughout the City before considering increasing building heights at a particular location.

Commissioner Jensen inquired about the 305 foot height limit on the nearby Holiday Inn site. Staff explained that the 305-foot height limit is in the General Plan, but no specific development proposal has been approved for that height and that future high-rise development proposals would require FAA clearance.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☑ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

In accordance with the Public Outreach Policy, a community meeting was held on October 24, 2006 at the project site. Two individuals from the public attended the meeting and raised no concerns specific to the proposal. Property owners and occupants located within 1,000-foot radius of the subject site also received a notice of public hearings on the subject General Plan amendment before the Planning Commission and City Council. The Department of Planning, Building and Code Enforcement web site also contains information regarding the General Plan process, amendments, staff reports, and hearing schedules. This web site is available with the most current information regarding the status of the General Plan amendments. City staff also notified the Rosemary Gardens Neighborhood Association, and no concerns or comments were received to date.

COORDINATION

Review of this General Plan text amendment was coordinated with the Airport Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies as discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Addendum to North San Jose Area Development Policy Final Program Environmental Impact Report Resolution No. 72768, and Addenda hereto, File No. GP06-T-01, adopted on April 26, 2007.

Andrew Crabtree
FOR JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Allen Tai, Department of Planning, Building and Code Enforcement at 535-7866.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113-1906

GENERAL PLAN TEXT AMENDMENT
STAFF REPORT
MAY 2007 HEARING

Hearing Date/Agenda Number:
P.C. May 2, 2007 Item: 6.b

File Number:
GP06-T-01

Council District and SNI Area:
3 – Not in an SNI area

Major Thoroughfares Map Number:
50

Assessor's Parcel Number(s):
230-29-065

Project Manager: Allen Tai

PROJECT DESCRIPTION:

General Plan text amendment request to increase the maximum allowable building height from 150 feet to 220 feet above ground level on an approximately 6.08-acre site located at the southeasterly corner of the intersection of Airport Parkway and Old Bayshore Highway (40, 50 Airport Parkway) and amend the text of the Rincon South Specific Plan as it relates to building height and residential land use policies in the North San Jose Area Development Policy.

LOCATION: Southeasterly corner of Airport Parkway and Old Bayshore Highway

ACREAGE: Approximately 6.08 acres

APPLICANT/OWNER:

Foster Enterprises, Inc., Applicant/Owner

GENERAL PLAN LAND USE / TRANSPORTATION DIAGRAM DESIGNATION:

Existing Designation: Industrial Park with a Transit/Employment Residential (55+ du/ac) Overlay and Floating Park and Preferred Hotel Site designations.

Proposed Designation: No changes proposed to the land use designations on the site.

EXISTING ZONING DISTRICT(S): IP - Industrial Park

SURROUNDING LAND USES AND GENERAL PLAN DESIGNATION(S):

North: U.S. Highway 101, industrial park uses and office buildings – Industrial Core Area

South: Office buildings – Industrial Park with Transit/Employment Residential (55+ du/ac) Overlay and Floating Park designations

East: Office buildings, ground floor retail, hotels, North First Street – Industrial Park with Transit/ Employment Residential (55+ du/ac) Overlay and Floating Park designations

West: Airport Parkway, DoubleTree Hotel, office buildings – Industrial Park with Transit/ Employment Residential (55+ du/ac) Overlay and Floating Park designations

ENVIRONMENTAL REVIEW STATUS:

Addendum to North San Jose Area Development Policy Final Program Environmental Impact Report Resolution No. 72768, and Addenda hereto, File No. GP06-T-01, adopted on April 26, 2007.

PLANNING STAFF RECOMMENDATION:

Continue to a General Plan hearing subsequent to the Council's consideration of the Airport Obstruction Study

Approved by: Andrew Crabtree
Date: 4-26-07

PLANNING COMMISSION RECOMMENDATION:

CITY COUNCIL ACTION:

CITY DEPARTMENT AND PUBLIC AGENCY COMMENTS RECEIVED:

- City of San Jose Airport Department – Airport Department staff stated that the proposal requires review by the Federal Aviation Administration (FAA) and recommended modifying the General Plan text to be defined by the airspace requirements of the Norman Y. Mineta San Jose International Airport.
- City of San Jose Fire Department – Fire Department staff has indicated that compliance with applicable fire and building codes will be verified when future development is reviewed during the Building Permit process.
- City of San Jose Public Works Department – Public Works Department staff identified that the subject site is subject to requirements for development in AO-1 Flood Zones and State Liquefaction Zones.
- Santa Clara County Airport Land Use Commission (ALUC) – The ALUC determined that the proposed height amendment is inconsistent with its Land Use Plan.
- California Department of Transportation (CalTrans) – CalTrans staff concurred with the ALUC that the proposed height limit increase is inconsistent with the Land Use Plan for Areas Surrounding Santa Clara County Airports.
- County of Santa Clara Roads and Airports Department – County Roads and Airport Dept. staff had no comments but requested coordination with staff during environmental review.

GENERAL CORRESPONDENCE:

- None received.

ANALYSIS AND RECOMMENDATIONS:

RECOMMENDATION

Planning staff recommends that the Planning Commission forward a recommendation to the City Council to continue the proposed General Plan text amendment to a future General Plan hearing subsequent to the Council's consideration of the pending Airport Obstruction Study.

PROJECT DESCRIPTION

This is a privately initiated General Plan text amendment request to increase the maximum allowable building height from 150 feet to 220 feet above ground level on an approximately 6.08-acre site located at the southeasterly corner of the intersection of Airport Parkway and Old Bayshore Highway. The text amendment specifically applies to the height policies under the Urban Design section of the General Plan text. In addition, revisions to the text of the Rincon South Specific Plan (Specific Plan) are necessary for consistency with the North San Jose Area Development Policy. Specifically, text revisions to the Specific Plan will address the proposed height limit and the addition of the Transit Employment Residential (55+ du/ac) Overlay that were adopted under the revised North San Jose Area Development Policy. No changes are proposed to the existing General Plan land use designations. There is an associated Planned

Figure A - Aerial Photograph of the site and the surrounding area, taken in 2001.

Development Rezoning application (PDC06-130) currently pending for development of 424 dwelling units and 9,700 square feet of ground floor commercial retail space within two 20-story towers.

BACKGROUND

Site and Surrounding Uses

The project site is an approximately 6.08-acre parcel located within a developed urban area of North San Jose on the southeast corner of Airport Parkway and Old Bayshore Highway, approximately 300 feet west of North First Street. The site is currently developed with two single-story office buildings totaling 102,000 square feet and is surrounded by a surface parking lot and landscaping. The buildings are partially occupied with various businesses including an attorney's office, credit services, and an adult continuing education facility.

Immediately surrounding land uses include a mix of office, commercial, and hotel land uses. The site is bordered on the north side by Old Bayshore Highway, which is a six-lane local roadway that connects Airport Parkway to North First Street and provides access to U.S. 101 to the north. South of the site are three two-story stucco office buildings and an office complex with three seven-story towers facing Metro Drive. Directly southeast of the site are the Fairfield Inn and Suites hotel, a small retail development and a gas station. A Holiday Inn hotel is located across North First Street further east. Across Airport Parkway to the west are the DoubleTree

Hotel and several large, multi-story office buildings. The site is approximately 2,000 feet east of the San Jose International Airport.

The subject property is located within the Rincon de Los Esteros Redevelopment Area, the North San José Development Policy Area, and the Rincon South Specific Plan Technology Park Sub-area. It is designated Industrial Park with Transit/Employment Residential (55+ dwelling units per acre (du/ac)) and Floating Park overlays in the San Jose 2020 General Plan. The site is also identified in the Rincon South Specific Plan as a Preferred Hotel Site. Surrounding properties have the same General Plan land use designations, with the exception of sites north of U.S. 101, which are designated Industrial Core Area. The immediate vicinity of the site is urban, characterized by industrial park development and mid-rise office buildings as depicted in the figures below. Existing mid-rise office development along North First Street and in proximity of the site along Technology and Metro Drives define the urban character of the Technology Park subarea of the Rincon South Specific Plan.

Figure B: View of the single story office buildings on the site.

Figure C: Office buildings across Technology Drive.

Figure D: View of seven-story Double Tree Hotel across Airport Parkway.

Figure E: View of seven-story office buildings along Metro Drive.

<u>Building Height Limits</u>

San Jose's height limit is generally 50 feet throughout the City; however, the San Jose 2020 General Plan does allow greater heights for specific areas identified for intensification. The North San Jose area has taller height limits than other areas of the City outside of the Downtown Core. Prior to the adoption of the revised North San Jose Area Development Policy (Policy), the North San Jose area within the Rincon de Los Esteros Redevelopment Area had a height limit of

90 feet, and those sites within a reasonable walking distance (approximately 2,000 feet) of a light rail station along the Guadalupe Transit Oriented Development Corridor on North First Street had building height limits of 120 feet. With the revised Policy, preference is given to transit-oriented sites to accommodate buildings up to 150 feet in height and height limits are also increased elsewhere. The Industrial Core Area of North San Jose currently has a maximum building height limit of 250 feet above grade while remaining areas outside of the Industrial Core Area and those not located near the Light Rail Transit corridor have a height limit of up to 120 feet.

ANALYSIS

The key issues in analyzing the proposed General Plan amendment are: 1) consistency with the North San José Area Development Policy; 2) consistency with the Rincon South Specific Plan; 3) consistency with the Land Use Plan for Areas Surrounding Santa Clara County Airports; and 4) relationship to the on-going Airport Obstruction Study.

Consistency with the North San Jose Area Development Policy

The North San José Area Development Policy (Policy) was revised in 2005 to allow greater intensities of industrial development and more mixed-use opportunities with high density residential development in proximity to Light Rail Transit, consistent with the City of San José's Vision for North San José. The Policy provides for the development of up to 32,000 new residential dwelling units within North San José, at minimum densities of 55 du/ac in selected areas, including the subject site, under the Transit/Employment Residential (55+ du/ac) Overlay. The Transit/Employment Residential (55+ du/ac) Overlay does not change the underlying land use designation of Industrial Park; however, with the parameters of the Policy, the overlay may potentially allow residential land uses as an alternative use at a minimum average density of 55 dwelling units per acre. The designation also allows commercial uses on the first two floors with residential uses on the upper floors. Development under this land use designation is intended to make efficient use of land to provide residential units near transit and to support nearby employment centers.

The subject proposal for a General Plan text amendment to allow a 220-foot building height limit on the site is intended to accommodate high-density residential development on the site. The increased height limit will facilitate future construction of seven additional stories to accommodate higher densities in close proximity to light rail transit. Given that a major goal of the Policy is to promote North San Jose as an important job center with preference given to transit-oriented sites for mixed-use residential and commercial development to reduce overall traffic congestion consistent with sustainable development principles, the proposed 220-foot height limit would accommodate a greater number of dwelling units in close proximity to transit and other existing infrastructure to implement the Policy's goals.

The proposal is also consistent with criteria for residential development established under the Policy. For example, the Policy requires that residential development must be at least 55 du/ac and greater than 55 du/ac to be prioritized according to the phasing plan. The associated Planned Development Rezoning application currently pending proposes that the 220-foot height limit could accommodate high rise residential development at approximately 70 du/ac. Furthermore, the site does not contain an existing important vital or "driving" industrial use, and the site is not adjacent to an industrial use that would be significantly adversely impacted by future high-rise

residential construction. Therefore, the proposed height increase is consistent with the North San José Area Development Policy.

Consistency with the Rincon South Specific Plan

Proposed Specific Plan Text Changes

The proposed project site is located within the Technology Park Sub-Area of the Rincon South Specific Plan area. The Specific Plan was last revised in 2001 and does not directly address the City's vision for higher density housing as an alternative use on selected sites and the maximum allowable building height increases established through the North San Jose Area Development Policy. The proposed text changes to the Rincon South Specific Plan are intended to bring the policies in the Specific Plan, as it relates to building heights and residential land uses, in alignment with the Policy. For the specific language of the proposed text amendment please see Attachment 1.

Land Use Compatibility

The current maximum building height limit along the North First Street corridor is 150 feet. A height allowance of 220 feet could result in future construction of one of the tallest buildings in the Rincon South Specific Plan area. A 220-foot height limit would be appropriate on the subject site given that the potential already exists for development in the immediate area to be of a similar or greater height on nearby properties. For instance, the tallest height limit in Rincon South is 305 feet at the Holiday Inn hotel site located on the southeast corner of North First Street and Highway 101. Moreover, the Industrial Core Area of North San Jose, which is outside the Rincon South Specific Plan area but located immediately opposite the subject site on the north side of U.S. 101, allows a maximum building height of 250 feet. Another site within the Rincon South Specific Plan area at the southeast corner of North Fourth Street and U.S. 101 also has a height limit of 220 feet. Therefore, the proposed building height limit would not be incompatible with properties in the immediate vicinity. In addition, the extra 70 feet beyond the existing height limit at this site is justified due to the lack of uses such as residences, public parks, and open space on the surrounding properties, which could be negatively affected by shade or shadows from the additional height. The surrounding properties are primarily developed with multi-story office, hotel, and commercial uses that would not be significantly impacted by the scale of the proposed height. The site's close proximity to the Metro Airport light rail station on North First Street also justifies intensification of development on the site. The subject property is also located at a distance of one-half mile away from the Rosemary Gardens neighborhood. In summary, the proposed 220-foot height limit is at a scale appropriate for the subject site location.

Consistency with the Land Use Plan for Areas Surrounding Santa Clara County Airports

Airport Land Use Development Review Process

According to Public Utilities Code (PUC) Section 21676(b), all proposed General Plan amendments must be referred to the local Airport Land Use Commission (ALUC) for review. The Santa Clara County ALUC reviews such proposals according to the Land Use Plan for Areas Surrounding Santa Clara County Airports (Land Use Plan) and height standards based on Part 77 of the Federal Aviation Regulations (FAR), which are intended to provide arrival and departure

paths to and from airports that are safe for air navigation. Proposals for structures that penetrate the Part 77 imaginary surface are deemed obstructions that require the Federal Aviation Administration (FAA) to determine whether an obstruction is a hazard through the completion of an aeronautical study. If the proposed structure is deemed not a hazard for airspace safety, the FAA will issue a Determination of No Hazard for Air Navigation, or "No Hazard Determination." To be consistent with the Land Use Plan, Aviation Policy No. 49 of the San Jose 2020 General Plan states that an aviation easement dedication should be required as a condition of approval for development in the vicinity of airports. Furthermore, in the review of high-rise building projects, the City has historically relied upon the FAA's issuance of a building project-specific "No Hazard" determination finding that the development would not adversely impact airspace or Airport operations. As a result, the City has complied with PUC Section 21670 regarding the protection of health, safety, and welfare in areas surrounding airports.

On April 26, 2006, the Santa Clara County ALUC determined that the proposed height is inconsistent with its Land Use Plan because the proposed height penetrates the imaginary surface standards in Part 77 of the Federal Aviation Regulations. The Part 77 imaginary surface level at this location is 159 feet above ground. Subsequent to the ALUC's determination, the applicants obtained a "No Hazard" clearance from the FAA. The issuance of a No Hazard determination demonstrates that the proposed height of 220 feet would not adversely impact air navigation nor increase the risk of safety hazards in the vicinity of the Norman Y. Mineta San Jose International Airport.

Proposed ALUC Overrule

The ALUC's determination that the proposed text amendment is inconsistent with its Land Use Plan invokes the requirement for a two-thirds vote of the City Council to overrule the ALUC determination in order to approve the proposed text amendment pursuant to PUC Section 21676. On March 9, 2007, staff notified the ALUC and the CalTrans Division of Aeronautics (Caltrans) of the proposed overrule of the ALUC determination on the subject text amendment. Staff requested the ALUC to reconsider their original determination based on the FAA No Hazard determination and consider the associated Planned Development Rezoning application. The ALUC made a determination that regardless of the FAA determination, both the General Plan Text amendment and the rezoning are inconsistent with their Land Use Plan because the proposed height penetrates the Part 77 Imaginary Surface. CalTrans' concurred with the ALUC in their comments on the proposed overrule and stated that the FAA No Hazard determination does not address compatibility issues with airport activity in terms of noise and safety impacts. CalTrans also stated that the FAA determination relating to land use compatibility is limited (see CalTrans letter in attachments).

Staff disagrees with the ALUC decision and CalTrans' comments on the proposed overrule. The ALUC did not cite any specific ALUC Policy as the basis for the determination, other than the proposal's penetration of the Part 77 imaginary surface. Furthermore, ALUC Policy G-3 provides that height restrictions shall be "according to the provisions of FAR Part 77, or an alternate elevation approved by the FAA." The FAA "No Hazard" determination for a 220-foot building height on the site constitutes an alternate elevation approved by the FAA. Contrary to CalTrans's statement, the FAA No Hazard determination is a result of a comprehensive analysis that considers factors relevant to the safe, efficient, and effective use of the navigable airspace, including aircraft arrival, departure, and en-route procedures, impact on airports and aeronautical facilities, and the cumulative impact of construction of a structure when combined with the

impact of other existing or proposed structures. Therefore, the FAA No Hazard determination is a reliable indicator of whether the proposed height would have adverse impacts on the safe and efficient use of airspace.

Findings for ALUC Overrule

State law requires that specific findings be made to support a decision to overrule the ALUC determination. The findings need to document how the City has considered any adopted long-range plans for the airport, addressed concerns with noise regulations, avoided creating new noise and safety hazards, and minimized the public's exposure to noise and safety hazards. Staff can make findings to support an overrule of the ALUC determination, as follows:

1. The City's development review process and methodology ensures future development on the subject site will minimize the public's exposure to excessive safety hazards by requiring future development to:

    - Comply with General Plan Transportation Policies 47 and 49 regarding protection of the operation of the Norman Y. Mineta International Airport by complying with the conditions of the FAA Determination of No Hazard.
    - Consistent with ALUC Policy G-3, dedicate easements for (1) avigation, and (2) obstruction or other similar clearance easement to the City as conditions of Development Permit approval. The obstruction easement will restrict development height to the height approved by the FAA in its "No Hazard" determination.

2. The project applicant obtained a FAA "No Hazard" determination for a proposed building reaching a height of 220 feet above ground level subject to conditions. The Determination of No Hazard states that the FAA had publicly circulated a notice of its aeronautical evaluation of the proposed project and no comments or objections had been submitted in response. The FAA circulation includes all airline operators at the Norman Y. Mineta San Jose International Airport, and none expressed concerns about the proposed height. Furthermore, there were no findings of excessive safety hazard caused by the proposed maximum building height limit.

3. The subject site is located outside of the Airport Safety Zones and outside of the 60dB, 65dB, 70dB, and 75dB CNEL Noise Contours for the Norman Y. Mineta San Jose International Airport and the area in which the subject site is not under the direct flight path of the Norman Y. Mineta San Jose International Airport. These facts address CalTrans' concerns about compatibility with airport operations and noise impacts.

4. The San Jose 2020 General Plan currently allows taller buildings on other sites in the immediate vicinity of the subject project site including buildings with a maximum allowable height of 250 feet in the Industrial Core Area across U.S. 101. The ALUC did not find that the 250-foot height limit in this area to be inconsistent with its Land Use Plan.

Staff believes that the foregoing findings adequately support a City Council decision to overrule the ALUC determination of nonconformance of the subject General Plan text amendment with the height policies within the Land Use Plan. A separated action by two-thirds vote of the City

Council will be required to overrule the ALUC's determination on the proposed Planned Development Rezoning application.

Relationship to pending Airport Obstruction Study and Citywide height policies

The City, in cooperation with the Redevelopment Agency, has undertaken an Airport Obstruction Study to determine how high-rise development in the Airport vicinity impacts airline service and to determine how to ensure that future development will not worsen current impacts. While the study notably focuses on high-rise construction in the Downtown area, it potentially will affect City policies related to appropriate building heights at other areas in proximity to the Airport or the Airport approach zones and consideration of building height limits in the project area could be a component of this study. While the Airport Obstruction Study, upon completion, may suggest consideration of a reduction in building height limits in Downtown or other areas, this General Plan text amendment application proposes an increase in the maximum allowable building height. The two issues should be considered together to ensure consistency in setting policy for building heights in the Airport vicinity. For this reason, staff recommends continuation of the subject amendment request until after Council consideration of the Airport Obstruction Study.

ENVIRONMENTAL REVIEW

An Addendum to the North San Jose Area Development Policy Final Program Environmental Impact Report for was adopted on April 25, 2007. When comparing the proposed request for an additional 70-foot increase to the current maximum allowable building height, no additional environmental impacts would result.

PUBLIC OUTREACH

Community Meeting and Public Noticing

The property owners and occupants located within 1000-foot radius of the subject site were mailed a notice informing them about a community meeting which was later held on October 24, 2006 at the project site. No concerns were raised during the community meeting, which had an attendance of two individuals from the public. Property owners and occupants located within 1000-foot radius of the subject site also received a notice of public hearings to be held on the subject General Plan amendment before the Planning Commission on April 25, 2007 and City Council on May 22, 2007. The Department of Planning, Building and Code Enforcement web site also contains information regarding the General Plan process, amendments, staff reports, and hearing schedules. This web site is available with the most current information regarding the status of the General Plan amendments. City staff also notified the Rosemary Gardens Neighborhood Association, and no concerns or comments were received to date.

CONCLUSION

Staff generally supports the idea of intensification for the area, but given that building heights in proximity to the Airport are currently under study, staff recommends continuing the consideration of the subject General Plan text amendment request in order for the City Council to consider building height policies on an area-wide level as these policies relate to the safety and aviation needs of the Norman Y. Mineta San Jose International Airport.

ATTACHMENT 1

PROPOSED TEXT AMENDMENT

GP06-T-01

Description

General Plan text amendment. Amend Chapter IV., Goals and Policies page 74.

Chapter IV., GOALS AND POLICIES

Urban Design

Urban Design Policy No. 10: [Page 74]

- SPECIFIC SITES AND GEOGRAPHIC AREA EXCEPTIONS:
  - On the southeasterly corner of Airport Parkway and Old Bayshore Highway, the maximum building height limit shall be defined by the airspace requirements of the San Jose International Airport as determined by the Federal Aviation Administration, but not to exceed is 220 feet in any event.

Description

General Plan text amendment. Amend Chapter V., Land Use/Transportation Diagram page 203.

Chapter V., GOALS AND POLICIES

Rincon South Planned Community

Specific Land Use Plan: [Page 203]

Transit/Employment Residential: 55+ Dwelling Units per Acre

A high-density residential overlay designation that indicates areas in which City Policy supports residential development as an alternate use at a minimum average density of 55 units per acre. The site may also be developed with uses consistent with the underlying designation. This designation permits development with commercial uses on the first two floors, with residential use on upper floors, as well as wholly residential projects. Development within this category is intended to make efficient use of land to provide residential units in support of nearby industrial employment centers. Site specific land use issues and compatibility with adjacent uses should be addressed through the rezoning and development permit process. Land within this overlay area may also be converted for the development of new schools and parks as needed to support residential development.

Description

Amend the Rincon South Specific Plan; Land Use Plan; Land Use Designations, page 27.

LAND USE PLAN

Land Use Designations: [Page 27]

Transit/Employment Residential: 55+ Dwelling Units per Acre

A high-density residential overlay designation that indicates areas in which City Policy supports residential development as an alternate use at a minimum average density of 55 units per acre. The site may also be developed with uses consistent with the underlying designation. This designation permits development with commercial uses on the first two floors, with residential use on upper floors, as well as wholly residential projects. Development within this category is intended to make efficient use of land to provide residential units in support of nearby industrial employment centers. Site specific land use issues and compatibility with adjacent uses should be addressed through the rezoning and development permit process. Land within this overlay area may also be converted for the development of new schools and parks as needed to support residential development.

Description

Amend the Rincon South Specific Plan; Land Use & Design Policies; Massing and Height, No. 11, page 38-39.

LAND USE PLAN

Overall Land Use and Design

Land Use Policies: Massing and Height, No. 11 [Page 38-39]

In the long term, Rincon South is expected to reach a fairly high level of urbanization as part of the development of the Guadalupe Corridor (North First Street). Taller buildings with smaller setbacks will be necessary to create such an urban area (*Figure 14*).

- Building heights should conform to limits established in this Plan, the City's General Plan, the Zoning Ordinance, and the City's design guidelines.
- In general, in the absence of specified height limitations, heights within the *Rincon South Specific Plan* area are limited to 50 feet.
- In the Kerley Sub-Area, east of North First Street, heights are generally limited to two to four stories, with five stories and sixty-five feet permitted along specified streets. For specific height limitations, see Kerley Neighborhood Sub-Area Land Use and Design Policies, beginning on page 43.

- In the Kerley Sub-Area, west of North First Street, heights of up to 120 feet are permitted, with significantly reduced heights required in proximity to the Rosemary Gardens neighborhood and along the First Street frontage, south of Sonora Avenue. See the Kerley Sub-Area Land Use and Design Policies beginning on page 43.
- In the Technology Park Sub-Area, at the southeasterly corner of Airport Parkway and Old Bayshore Highway, the building height shall be defined by the airspace requirements of the San Jose International Airport as determined by the Federal Aviation Administration, but not to exceed is 220 feet in any event.
- In the Technology Park Sub-Area, a maximum building height of 305 feet is permitted on a site at the southeast corner of North First Street and Highway 101.
- With the exception of the Kerley Sub-Area, ~~H~~heights of up to 120 feet are generally permitted throughout the ~~Technology Sub-Area~~ Specific Plan area within the North San Jose Development Policy area, with a height of up to 150 feet permitted on sites located within a reasonable walking distance ("reasonable walking distance" is generally assumed to be approximately 2,000 feet along a safe pedestrian walkway) of a light rail transit station. ~~with a building height of 305 feet permitted on a site at the southeast corner of North First Street and highway 101.~~
- In the Fourth Street Industrial Support Sub-Area, heights are generally limited to 50 feet, with a height of 120 feet allowed for the site at the extreme north tip of the sub-area.
- Minor portions, including occupiable portions, of buildings may exceed the three and four story limits for no more than 20% of any building footprint in order to introduce architectural variety in projects.

Description

Amend the Rincon South Specific Plan; Technology Park Sub-Area; page 56-58.

TECHNOLOGY PARK SUB-AREA

Land Use Policies: [Page 56]

3. Residential Use

Residential development within this sub-area should be consistent with the residential land use criteria within in the North San Jose Area Development Policy pertaining to compatibility with industrial uses, provisions for public services and amenities, site design, and criteria for prioritization according to the North San Jose Area Development Policy phasing plan. Residential development may only be permitted under the Transit/Employment Residential (55+ dwelling units per acre) Overlay designation.

Building Scale and Height,

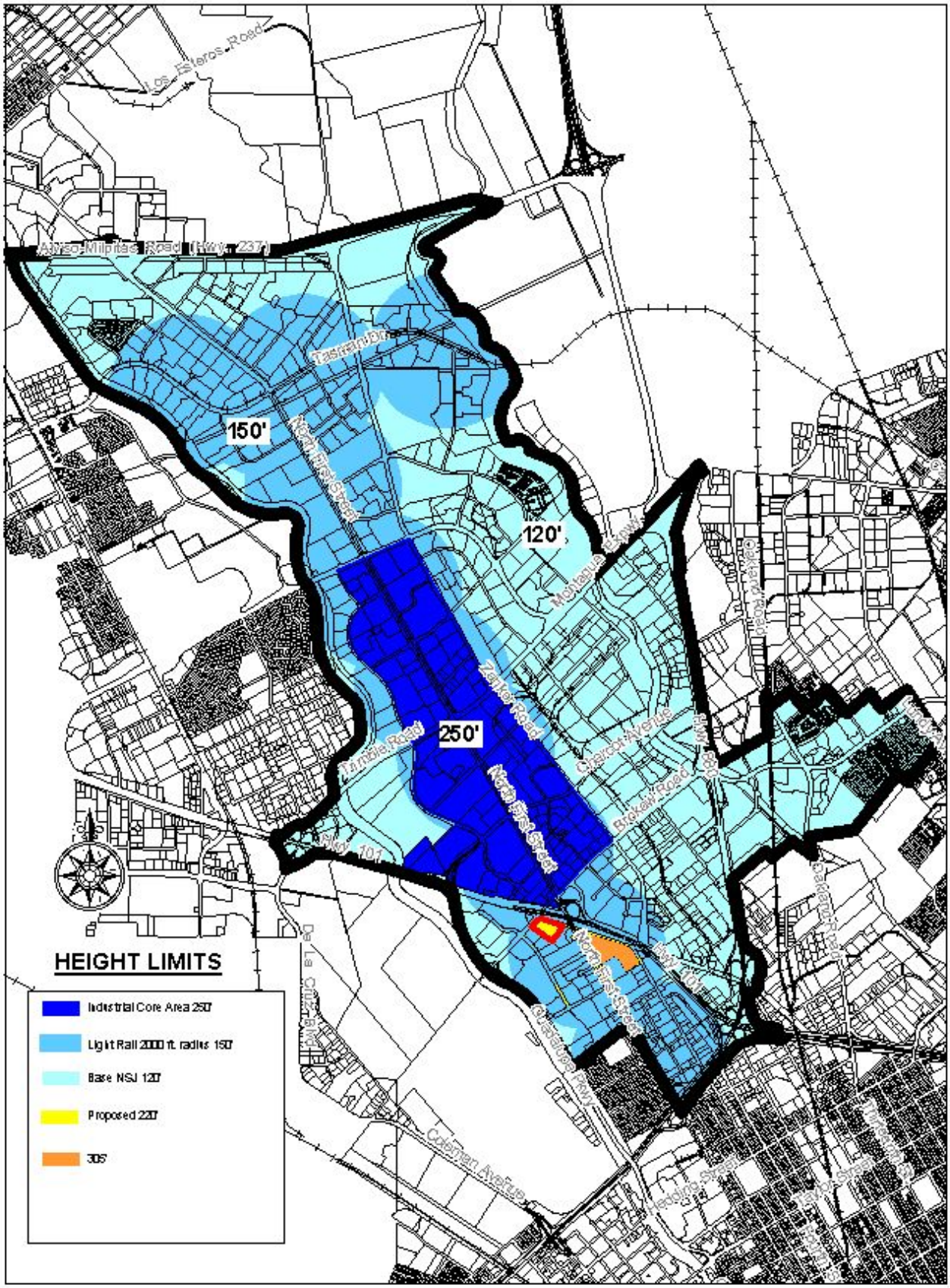
5. Building Height –General: [Page 58]

- Building height, in the absence of other specific limitations, ~~is limited to no more than 120 feet~~ shall be consistent with the height ~~limit~~ policies of the San Jose 2020 General Plan and should be consistent with the North San Jose Area Development Policy.

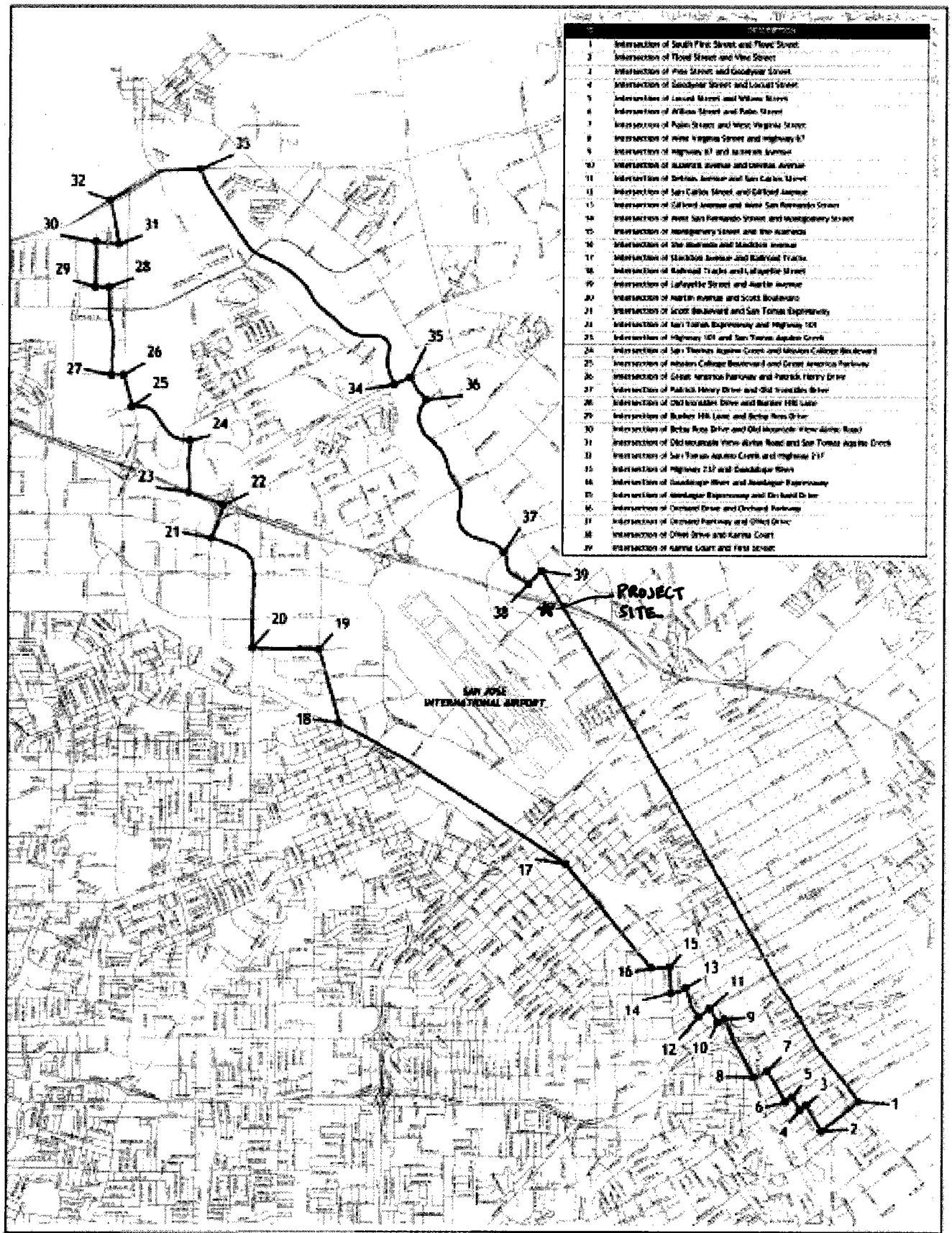
- Building height is limited to no more than 305 feet for the site located at the southeast corner of North First Street and Highway 101.

- Building height is limited to no more than 220 feet for the site located at the southeasterly corner of Airport Parkway and Old Bayshore Highway.

North San Jose Area
General Plan Height Limits



Prepared by the Department of Planning, Building and Code Enforcement



San Jose International Airport Referral Boundary

Parcels within the Referral Zone

Parcels

ALUC Land Use Referral Boundary

San Jose International Airport

Santa Clara County Planning Office August 2003

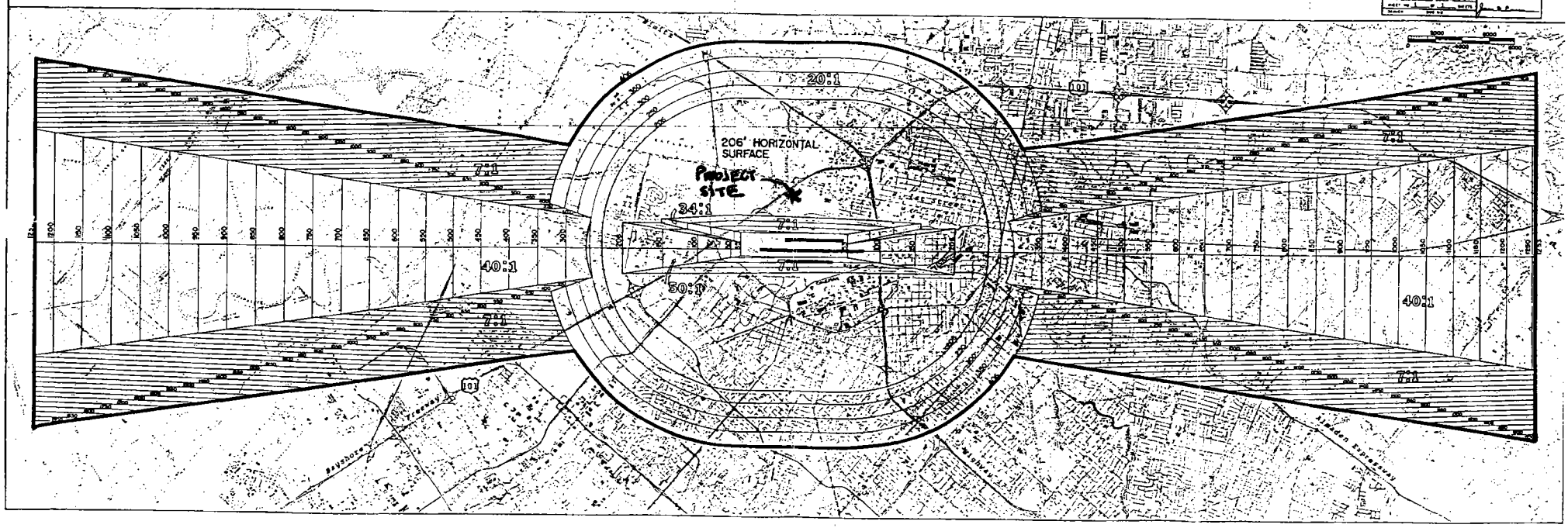
Adopted December 14, 2005

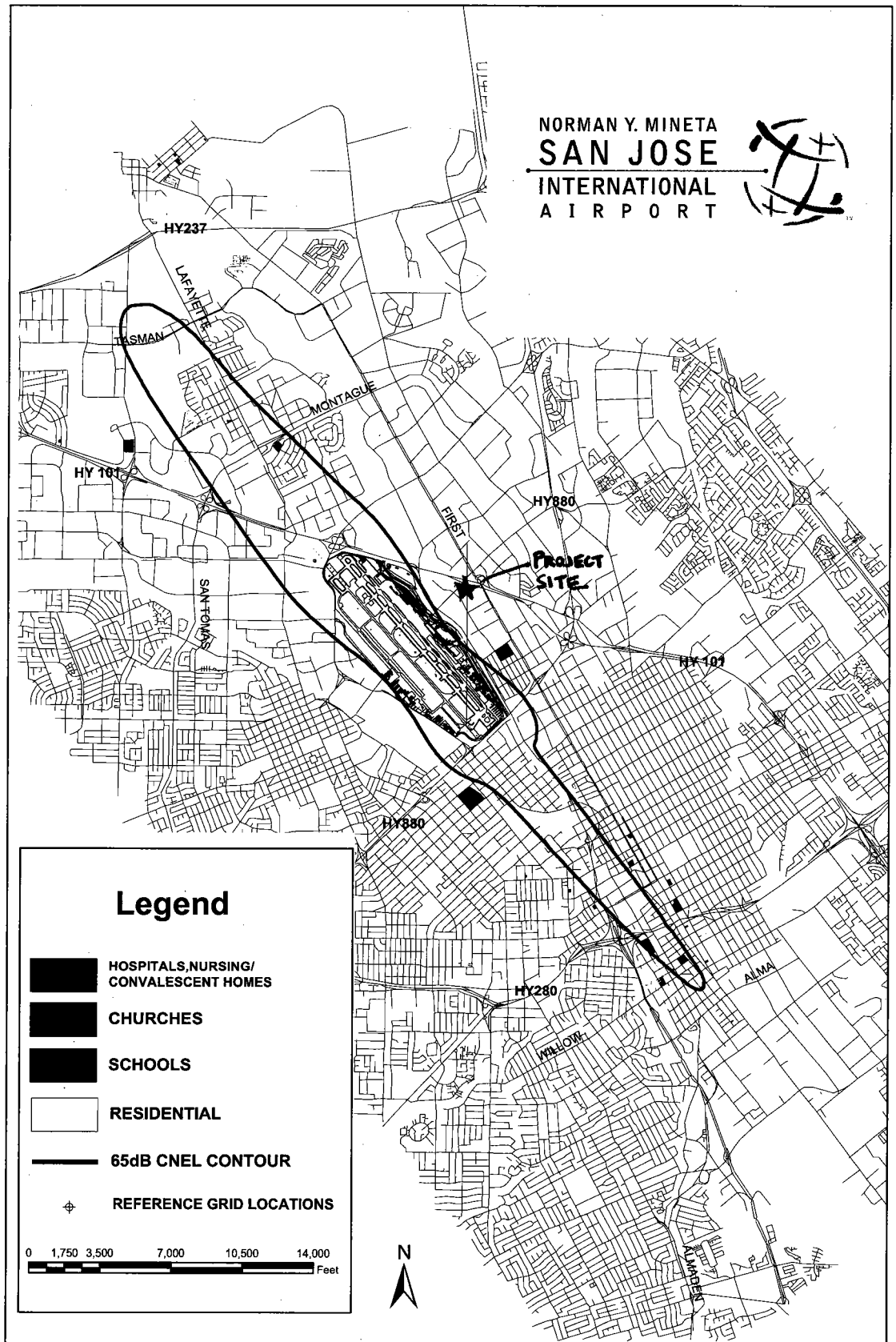
ALL ELEVATIONS ARE
ABOVE MEAN SEA LEVEL
(U.S. GEOLOGICAL SURVEY- 1968)

ALUC HEIGHT RESTRICTION BOUNDARY

SAN JOSE MUNICIPAL AIRPORT

FAR PART 77
OBSTRUCTION CHART
SAN JOSE MUNICIPAL AIRPORT
AIRPORT DEPARTMENT
SAN JOSE, CALIFORNIA

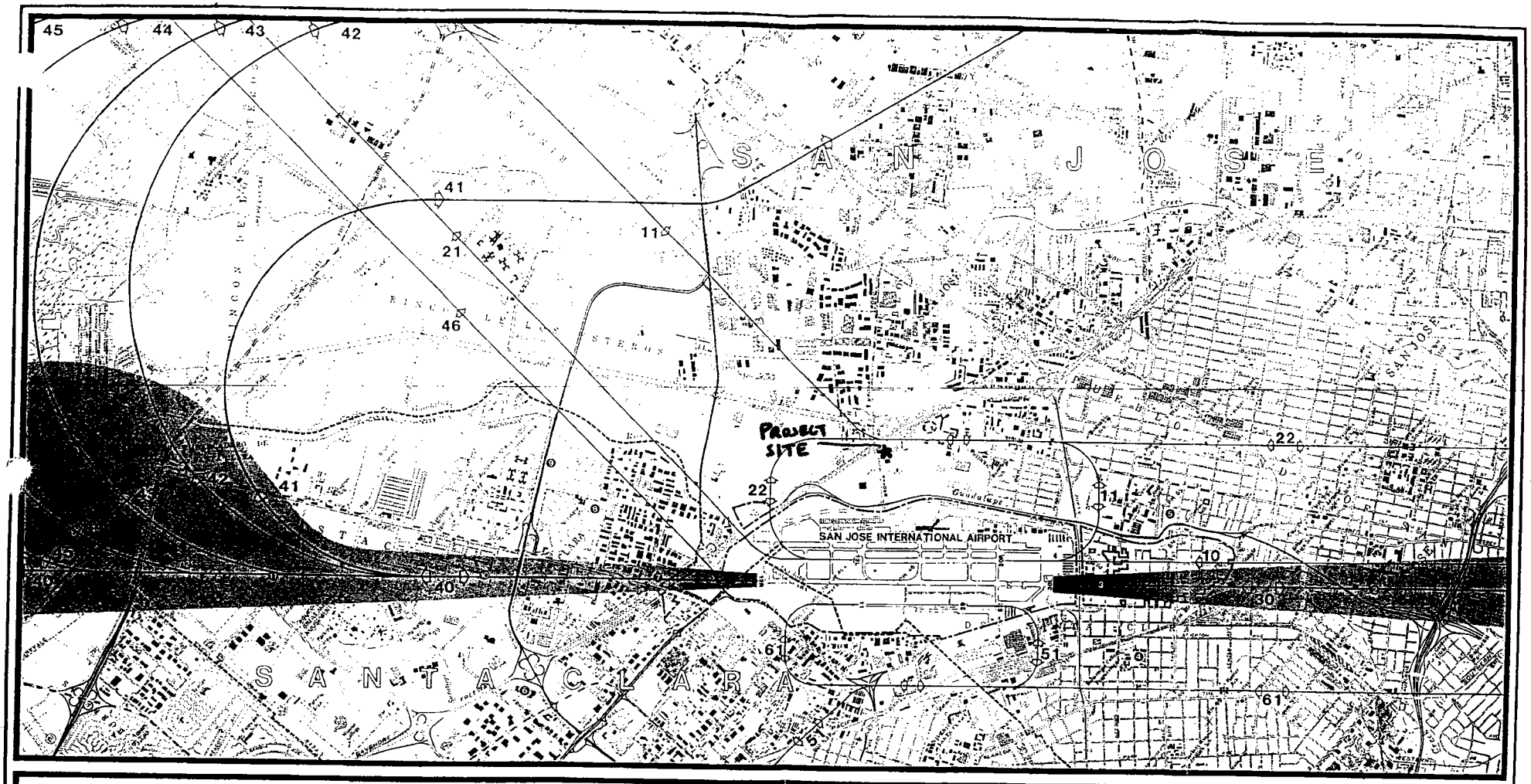




65 dB CNEL CONTOUR FOR 2010 MASTER PLAN WITH AMENDMENT

SERVING SAN JOSE SINCE 1946

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT



SAN JOSE INTERNATIONAL AIRPORT
FAR PART 150 AIRPORT NOISE COMPATIBILITY PROGRAM

CITY OF SAN JOSÉ, CALIFORNIA
AIRPORT DEPARTMENT
PLANNING DEPARTMENT

McCLINTOCK, BECKER & ASSOCIATES
HOWARD NEEDLES TAMMEN & BERGENDOFF

LEGEND

- COMMUNITY BOUNDARY
- AIRPORT PROPERTY LINE
- TURBOJET AIRCRAFT FLIGHT TRACKS
- PROPELLER AIRCRAFT FLIGHT TRACKS
- REMOTE MONITORING SITE
- 40 FLIGHT TRACK DESIGNATION

AREA SUBJECT TO LOW ALTITUDE OVERFLIGHT BY TURBOJET AIRCRAFT

SCALE

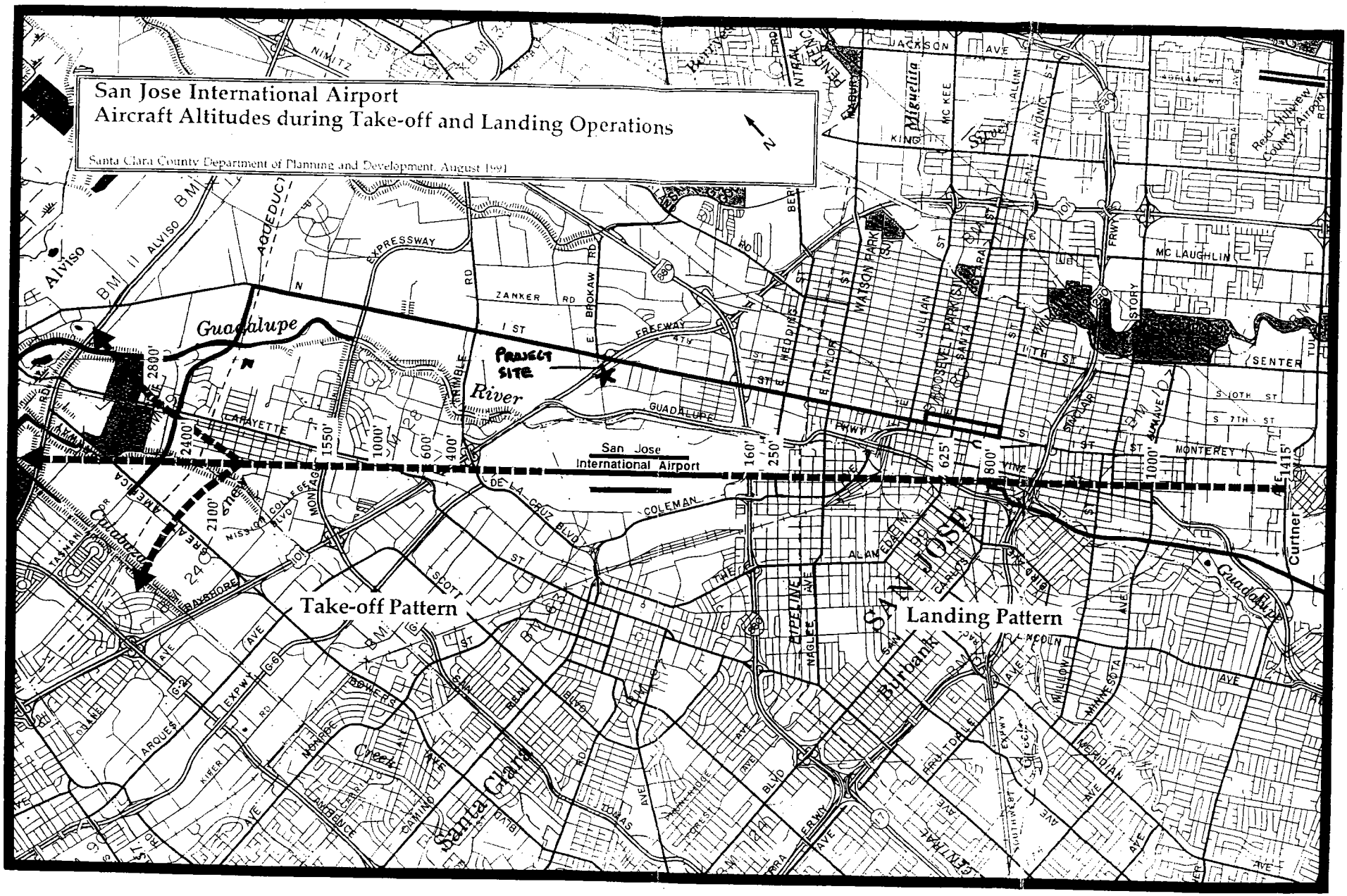
NORTH

SCALE IN FEET
1000 0 1000 2000 3000 4000 5000

EXHIBIT NO. 1-2

MAJOR IFR AND VFR FLIGHT TRACKS - BASELINE CONDITIONS

CITY OF SAN JOSÉ CALIFORNIA


San Jose International Airport
Aircraft Altitudes during Take-off and Landing Operations
Santa Clara County Department of Planning and Development, August 1991
N
Project Site
Guadalupe
River
San Jose
International Airport
Take-off Pattern
Landing Pattern
2800'
2400'
2100'
1550'
1000'
600'
400'
160'
250'
625'
800'
1000'
1415'
Alviso
Milpitas
Santa Clara
Burbank
Curtner
Guadalupe
Creek
Coyote
Alviso Slough
Guadalupe River
Watson Park
Roosevelt Park
Mc Laughlin
Mc Kee
King
Jackson
Ave
Expressway
Zanker Rd
I St
Freeway
Gimble Rd
Brokaw Rd
Aqueduct
Carayette
Guadalupe
De La Cruz Blvd
Coleman
Alameda
Monterey
Senter
Story
Taylor
Julian
Santa Clara
Hedding
Pipeline Ave
Nagle
Lincoln
Bowers
Montague
Tasman
Arques
Kifer
Expwy
Bayshore
Spot
Meridian
Minnesota
Millon
Fruitdale
Blvd
Rd
Ave
Frwy
Hwy
Exit
Bridge
Creek
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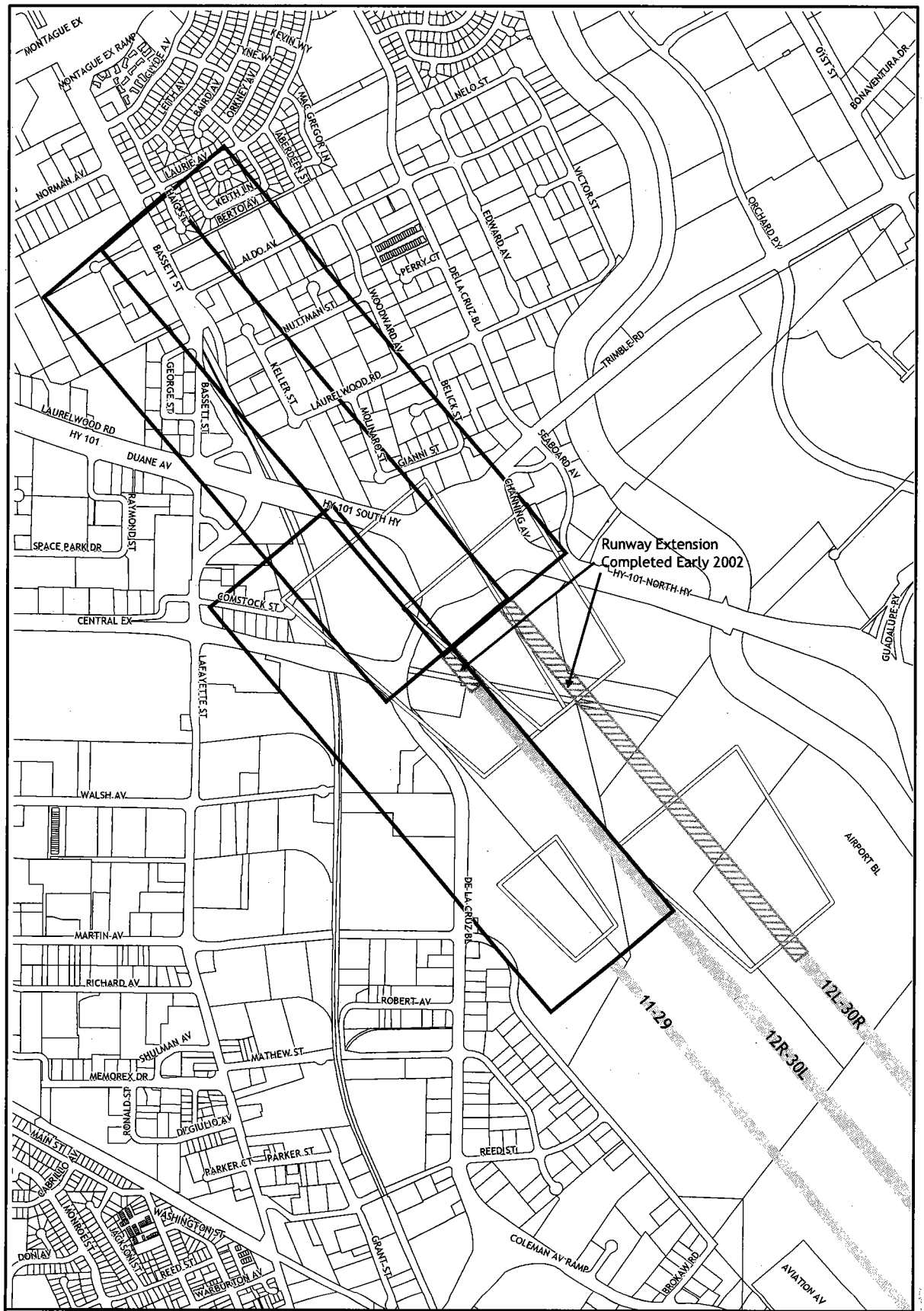
Reid-Hillview
County
Rd
St
BM
G-2
G-6
G-9
680
880
101
280



ALUC Safety Zones
Dimensions:
- 1,500 Feet (Width)
- 5,000 Feet (Length)

Runway Extension

Runway

Runway Protection Zone

Safety Zones (North)
San Jose International Airport

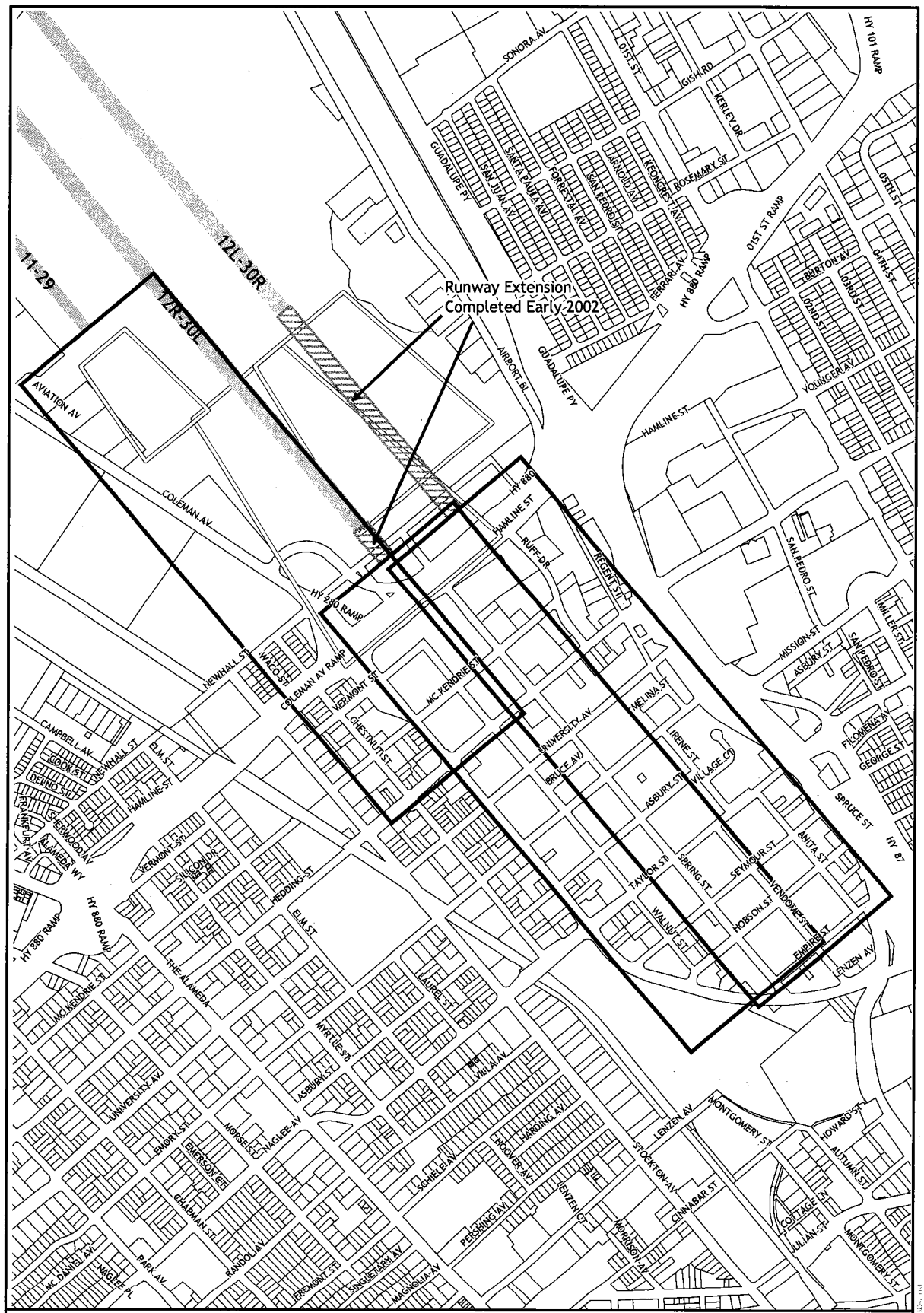
Note: RPZ, Extension and Runway data courtesy of San Jose International Airport. Projected manually to Air Photos, NOT to the parcel basemap. Safety Zones digitized by the Planning Office. Accuracy can not be guaranteed.

N

0 305 610 1,220
Feet

Map created by Jay Mukherjee
SCC Planning Office GIS
August 2003

Adopted
December 14, 2005



ALUC Safety Zones
Dimensions:
- 1,500 Feet (Width)
- 5,000 Feet (Length)

Runway Extension

Runway

Runway Protection Zone

Safety Zones (South)
San Jose International Airport

Note: RPZ, Extension and Runway data courtesy of San Jose International Airport. Projected manually to Air Photos, NOT to the parcel basemap. Safety Zones digitized by the Planning Office. Accuracy can not be guaranteed.

N

0 280 560 1,120
Feet

Map created by Jay Mukherjee
SCC Planning Office GIS
August 2003

Adopted
December 14, 2005

RD:VMT
04/25/2007

DRAFT

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 TEXT AMENDMENT APPLICATION FILE NO. GP06-T-01 IS CONSISTENT WITH THE PURPOSES SET FORTH IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 21670 AND OVERRULING THE AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED PROJECT IS NOT CONSISTENT WITH THE ALUC HEIGHT POLICIES AS DEFINED BY THE "LAND USE PLAN FOR AREAS SURROUNDING SANTA CLARA COUNTY AIRPORTS"

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 Text Amendment application number GP06-T-01 to the Airport Land Use Commission of Santa Clara County ("ALUC") for a determination of consistency with the ALUC's plans insofar as the area covered by GP06-T-01 falls within the ALUC's referral area surrounding Mineta San Jose International Airport; and

WHEREAS, a copy of the project description for General Plan Text Amendment application number GP06-T-01 was also provided to the California Department of Transportation Division of Aeronautics on July 5, 2006; and

WHEREAS, on April 26, 2006 the ALUC, acting pursuant to its authority under Section 21676, determined that GP06-T-01 is inconsistent with ALUC height policies, as defined in the "Land Use Plan for Areas Surrounding Santa Clara County Airports" (the "Land Use Plan"), in that the "the text amendment proposes allowing a maximum building height of 220 feet, which exceeds the ALUC height restriction of 206 feet for the subject site. It is the position of the ALUC that the Federal Aviation Administration (FAA) [14 CFR] Part 77 Imaginary Surface height restrictions, adopted by the ALUC in its Land Use Plan, represent a reasonable consideration for public safety for which compliance should be required [;]" and

WHEREAS, the ALUC's determination described in the previous paragraph did not cite any specific ALUC policy that was the basis for the determination, nor how the proposal would be inconsistent with any such specific policy; and

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

WHEREAS, ALUC Policy G-3 provides that required development height restrictions shall be "according to the provisions of FAR Part-77, or an alternate elevation approved by the FAA[;] and

WHEREAS, the City believes that the project is in compliance with FAR Part 77 through application made to the FAA by the applicant of General Plan Text Amendment GP06-T-01 and the FAA's subsequent issuance of a "No Hazard" determination for the subject project; and

WHEREAS, further pursuant to the provisions of Section 21676 the City may after a public hearing on the matter propose to 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

WHEREAS, the City has notified the ALUC and the California Department of Transportation Division of Aeronautics of its proposed decision to override the ALUC's determination on nonconformance with the height policies in the Land Use Plan and has conducted a duly noticed public hearing thereon; and

WHEREAS, the City Council heard and considered all testimony and other evidence presented, including a memorandum from the Department of Planning, Building, and Code Enforcement, related to this item; and

WHEREAS, the City Council believes it is appropriate under its authority provided in Section 21676 to override the ALUC's determination that the General Plan Text Amendment file no. GP06-T-01 is not consistent with the Land Use Plan for the reasons set forth herein.

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

SECTION 1. The City Council hereby makes the following findings with regard to the ALUC's determination of inconsistency with height policies in the Land Use Plan:

A. In order to comply with Section 21670, the City's development review process and methodology ensures future development on the subject site would minimize the public's exposure to excessive safety hazards by requiring future development to:

1. Comply with General Plan Aviation Policies 47 and 49 regarding protection of the operation of the Norman Y. Mineta International Airport by complying with the conditions of the FAA Determination of No Hazard and,
2. Consistent with ALUC Policy G-3 and General Plan Aviation Policy 49, dedicate easements for (a) avigation and, (2) obstruction or other clearance easement to the City as conditions of construction approval. The clearance easement shall restrict development height to the maximum height authorized by the FAA in it No Hazard determination or no more than 220 feet above ground level.

B. Pursuant to the notification requirements of FAR Part 77, the project applicant had submitted project plans to the FAA for a proposed building reaching a height of 220 feet above ground level or 263 feet above mean sea level at its highest point, and the FAA subsequently issued a Determination of No Hazard for the proposed building subject to conditions. The Determination of No Hazard states that the FAA had publicly circulated a notice of its aeronautical evaluation of the proposed project and no comments or objections had been submitted in response. Furthermore, there were no findings of excessive safety hazard caused by the proposed maximum building height limit.

C. The site that is the subject of General Plan Text Amendment GP06-T-01 is located <u>outside</u> of the Airport Safety Zones and <u>outside</u> of the 60dB, 65dB, 70dB, and 75dB CNEL Contours for the San Jose International Airport and the area in which the subject site is <u>not</u> located under the direct flight path of the San Jose International Airport.

D. The San Jose 2020 General Plan currently allows taller buildings on other sites in the vicinity of the subject project site; for example, the San Jose 2020 General Plan states that "in the portion of the North San Jose/Rincon de Los Esteros Redevelopment Area bounded by Brokaw Road to the south, Zanker Road to the east, Montague Expressway to the north, and along its western edge by Orchard Parkway north of Atmel Way and by Highway 101 south of Atmel Way, the maximum building height shall be defined by the airspace requirements of the San Jose International Airport as determined by the Federal Aviation Administration, but not to exceed 250 feet in any event." The ALUC did not find that the 250-foot height limit in this area to be inconsistent with its Land Use Plan. The project site is located just within 500 feet of this Industrial Core boundary and the proposed height is under the maximum allowable height of 250 feet for the Industrial Core.

<u>SECTION 2</u>. Therefore, based upon the findings set forth above, the City Council hereby finds that the development proposed under General Plan Text Amendment file no. GP06-T-01 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 around Mineta San Jose International Airport and that the subject project appears to be in compliance with the ALUC Land Use Plan with the subsequent issuance of a No Hazard determination by the FAA.

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SECTION 3. Based upon all of the foregoing findings and conclusions, the City Council hereby overrules the ALUC determination of nonconformance of General Plan Text Amendment file no. GP06-T-01 with the height polices within the Land Use Plan.

ADOPTED this 22nd day of May, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS – M.S.#40
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-4959
FAX (916) 653-9531
TTY (916) 651-6827

Flex your power!
Be energy efficient!

April 6, 2007

Mr. Allen Tai
City of San Jose
200 East Santa Clara Street, 3rd Floor Tower
San Jose CA 93540

Dear Mr. Tai:

General Plan Text Amendment File No. GP06-T-01, located on the southern corner of the intersection of Airport Parkway and Old Bayshore Highway (40, 50 Airport/APN: 230-29-065)

Thank you for including the California Department of Transportation (Department), Division of Aeronautics (Division) in the overrule process for the above-referenced project. California Public Utilities Code (PUC) Section 21676.5, provides the Department an opportunity to comment on the specific findings that a local government intends to use when proposing to overrule an Airport Land Use Commission (ALUC). We specifically look to see if the findings proposed will support what is required in State law, PUC Section 21670 et. seq. The findings must show evidence that the city is "...minimizing the public's exposure to excessive noise and safety hazards within areas around public airports." As a tool and supplement to the PUC, the Division uses the current *California Airport Land Use Planning Handbook* published January 2002, to establish if a project meets the intent of the PUC.

The subject project is a general plan amendment to revise the text section of the general plan as it relates to the North San Jose Area Development Policy to allow a change of maximum building height from 150 feet to 230 feet on a 6.1 acre site and amend the text of the Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101 (City of San Jose No. GP—06-T01, APN 230-29-065). The project area encompasses one parcel located approximately 3,116 feet from the Norman Y. Mineta San Jose International Airport. We have reviewed the findings to be used to overrule the Santa Clara County ALUC and offer the following comments:

Finding: Section 1, A-D
The Santa Clara County ALUC reviewed the proposed change in text that would allow "a maximum building height of 230 feet, which exceeds the ALUC restriction of 206 feet for the subject site" and made an incompatible determination. The City of San Jose's finding is primarily based on the "No Hazard" determination by the Federal Aviation Administration (FAA) and the conclusion that the ALUC's determination should be consistent with the FAA's determination. However, the determination of "No Hazard" by the FAA does not mean the State and the ALUC cannot apply stricter standards. An FAA determination of "No Hazard" does not address whether the proposed construction is compatible with airport activity in terms of safety and noise impacts. The FAA criterion applies to property controlled by the airport proprietor – its role is with regard to the safety of aircraft operations. FAA land use safety compatibility

guidance is limited to the immediate vicinity of the runway, the runway protection zones at each end of the runway, and the protection of navigable airspace. Local governments having jurisdiction over land use are typically held responsible for establishing height limitation ordinances to prevent new obstructions to Federal Aviation Regulation (FAR) Part 77. FAR Part 77 surfaces cover a much greater geographic area, but they were established for the purposes of airspace protection, not safety compatibility. FAR Part 77, especially the transitional surfaces, have rather minimal correlation to where accidents occur around airports. We are in concurrence with Santa Clara County ALUC's rationale for its recommendations.

The purpose of the ALUC is to provide for the orderly development of areas surrounding public airports in Santa Clara County. The protection of people and property on the ground from the potential consequences of near-airport aircraft accidents is a fundamental land use compatibility-planning objective. While the chance of an aircraft injuring someone on the ground is historically quite low, an aircraft accident is a high consequence event. To protect people and property on the ground from the risks of near-airport aircraft accidents, some form of restrictions on land use are essential.

Although the need for compatible and safe land uses near airports in California is both a local and State issue, airport staff, airport land use commissions, and airport land use compatibility plans are key to protecting an airport and the people residing, working and recreating in the vicinity of an airport. Consideration given to the issue of compatible land uses within an airport's environs should help to relieve future conflicts between airports and their neighbors.

These comments reflect the areas of concern to the Department's Division of Aeronautics. We appreciate the opportunity to review and comment on this project. If you have any questions, please call Joanne McDermott at (916) 654-5253.

Sincerely,

Mary C. Frederick

MARY C. FREDERICK, Chief
Division of Aeronautics

c: Mark Connelly, County of Santa Clara
Lee Taubeneck, District 4
Tim Sable, District 4

ALUC
SANTA CLARA COUNTY

Airport Land Use Commission
County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA 95110
(408) 299-5786 FAX (408) 288-9198

April 5, 2007

Allen Tai, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113

Re: City of San Jose File No. GP06-T-01 Override

General Plan Text Amendment request to revise the text section of the North San Jose Development Policy to allow a change of maximum building height from 150 feet to 230 feet above ground level (AGL), on a 6.1-acre parcel and amend the text of the Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101(APN 230-29-065).

Dear Mr. Tai:

At the meeting of March 28, 2007, the ALUC considered comments on the proposed override of the determination made at the April 26, 2006 meeting, which found the above-cited General Plan Text Amendment and Specific Plan Text Amendment inconsistent with the Land Use Plan for Areas Surrounding Santa Clara County Airports. At the meeting, the ALUC moved to forward the following comment on the proposed override:

The ALUC continues to adhere to the height regulations as stated in the FAA Part 77 elevations. Although a " No-Hazard" determination has been issued by the FAA, the ALUC still finds the General Plan Amendment and Specific Plan Amendment to be inconsistent with the *Land Use Plan for Areas Surrounding Santa Clara County Airports,* because the amendments propose the allowance of a maximum building height of 230 feet in this specific development proposal, which exceeds the height restriction boundary of 206 feet. As a result of the No-Hazard determination, the development proposal included a reduction in the height of the specific proposal to 220 feet. The ALUC still found the General Plan Amendment and Specific Plan Amendment inconsistent with the Land Use Plan for the same reason.

The ALUC finds that the Federal Aviation Administration (FAA) Part 77 Imaginary Surface Height Restrictions, adopted by the ALUC, represent a reasonable consideration for public safety, for which compliance should be required.

The ALUC file number is 8969-06R-03. If you have any questions, please do not hesitate to contact me at (408) 299-5786, or via e-mail at: mark.connolly@pln.sccgov.org.
Sincerely,

ALUC
SANTA CLARA COUNTY

Airport Land Use Commission
County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA 95110
(408) 299-5786 FAX (408) 288-9198

Mark J Connolly
ALUC Staff Coordinator
Tms/mjc

ALUC
Airport Land Use Commissic
County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA 95110
(408) 299-5798 FAX (408) 288-9198
SANTA CLARA COUNTY

April 27, 2006

RECEIVED
APR 28 2006
CITY OF SAN JOSE
PLANNING DEPARTMENT

Allen Tai, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113

Re: City of San Jose No. GP06-T-01
General Plan Text Amendment request to revise text section of the North San Jose Development Policy to allow a change of maximum building height from 150 to 230 feet on a 6.1-acre site and amend the text of Rincon South Specific Plan on the southwest corner of the intersection of Airport Parkway and Highway 101 (APN 230-29-065)

Dear Allen:

Please find enclosed a copy of the agenda and staff recommendation for the above-cited project reviewed by the Santa Clara County Airport Land Use Commission (ALUC) on April 26, 2006 (ALUC File Number 8969-06R-03).

General Plan Text Amendment GP06-T-01 was determined to be inconsistent with ALUC policies, as defined in the *Land Use Plan for Areas Surrounding Santa Clara County Airports,* because the text amendment proposes allowing a maximum building height of 230 feet, which exceeds the ALUC height restriction of 206 feet for the subject site. It is the position of the ALUC that the Federal Aviation Administration (FAA) Part 77 Imaginary Surface height restrictions, adopted by the ALUC in its *Land Use Plan,* represent a reasonable consideration for public safety for which compliance should be required.

If you have any questions, please do not hesitate to contact me at (408) 299-5798.

Sincerely,

Dana Peak

Dana Peak
ALUC Staff Coordinator

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

RECEIVED
FEB 10 2006
PLANNING DEPARTMENT

Memorandum

TO: Allen Tai
Planning Department

FROM: Cary Greene
Airport Department

SUBJECT: **GP06-T-01**
(SW cr. Hwy 101/Airport Pkwy)

DATE: February 10, 2006

The Airport Department has reviewed PBCE's 2/8 referral of this proposed General Plan Text Amendment and offers the following comments:

Under federal regulations applicable to the vicinity of San Jose International Airport, development on the subject project site is limited to an elevation of 208 feet above mean sea level (approximately 160-165 feet above ground), unless a proposed structure exceeding this elevation is specifically reviewed by the Federal Aviation Administration (FAA) and determined to be acceptable.

Therefore, we recommend consideration of modifying the proposed GP text amendment to ***"allow maximum building height to be defined by the airspace requirements of San Jose International Airport up to a maximum of 230 feet"***. This modification would also ensure consistency with General Plan Transportation Policy #47.

If you or the applicant have any questions, please contact me by e-mail or at 501-7702.

Cary Greene

Cary Greene
Airport Planner

cc: Ron Eddow

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RECEIVED
FEB 23 2006
CITY OF SAN JOSE
PLANNING DEPARTMENT

Memorandum

DATE: 02/21/06

TO: Allen Tai
FROM: Nadia Naum-Stoian

Re: Plan Review Comments
PLANNING NO: GP06-T-01
DESCRIPTION: GENERAL PLAN TEXT AMENDMENT request to revise text section of the North San Jose Development Policy to allow a change of maximum building height from 150 feet to 230 feet on a 6.1-acre site and amend the text of Rincon South Specific Plan (Foster Enterprises, Owner/Applicant)
LOCATION:
ADDRESS: 50 AIRPORT PY
FOLDER #: 06 004117 AO

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

The application provided does not include adequate information for our review; Fire Department staff will provide further review and comments when additional information is received as part of subsequent permit applications.
Planner to check with Hazardous Materials Division, , Michael Murtiff, for Environmental concerns, and Fire Administrative Officer Geoff Cady for response impact.

Nadia Naum-Stoian
Fire Protection Engineer
Bureau of Fire Prevention
Fire Department
(408) 535-7699

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Allen Tai
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

SUBJECT: **RESPONSE TO GENERAL PLAN AMENDMENT APPLICATION**

DATE: 02/13/06

PLANNING NO.:	GP06-T-01
DESCRIPTION:	GENERAL PLAN TEXT AMENDMENT request to revise text section of the North San Jose Development Policy to allow a change of maximum building height from 150 feet to 230 feet on a 6.1-acre site and amend the text of Rincon South Specific Plan (Foster Enterprises, Owner/Applicant)
LOCATION:	on the southwest corner of the intersection of Airport Parkway and Highway 101 (50 Aiport Parkway)
P.W. NUMBER:	3-03564

Public Works received the subject project on 02/10/06 and submits the following comments:

[AO-1] Flood Zone
[NO] Geological Hazard Zone
[NO] State Landslide Zone
[YES] State Liquefaction Zone
[NO] Inadequate Sanitary capacity
[NO] Inadequate Storm capacity
[NO] Major Access Constraints
[NO] Near-Term Traffic Impact Analysis

Comments: None.

Please contact the Project Engineer, Andrew Turner at 535-6899 if you have any questions.

EBRAHIM SOHRABI
Senior Civil Engineer
Transportation and Development Services Division

ES:AT:jw

County of Santa Clara

Roads and Airports Department
Land Development and Permits
101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2460 FAX (408) 441-0275

RECEIVED
FEB 21 2006
PLANNING DEPARTMENT

February 16, 2006

Mr. Allen Tai
Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

Subj: General Plan Text Amendment of Maximum Building Height for the Rincon South Specific Plan
City File No: GP06-T-01 **APN**: 23029065

Dear Mr. Tai,

We have received your transmittal dated February 8, 2006. At this time, we have no comments on the above referenced project to allow a change of maximum building height from 150 feet to 230 feet on a 6.1 acre site located at the southwest corner of the intersection of Airport Parkway and Highway 101. However, we would like to have the opportunity to review and comment on the Environmental Impact Report for this project and any recommended mitigation measures on affected County facilities.

Thank you for the opportunity to review and comment on this project. If you have questions, please call me at (408) 573-2462.

Sincerely,

Felix Lopez
Project Engineer

Cc: WRL, RN, file

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, James T. Beall Jr., Liz Kniss
County Executive: Peter Kutras, Jr.

7-003

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

ADDENDUM TO AN EIR
USE OF A FINAL EIR PREPARED FOR A PREVIOUS PROJECT

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to an Environmental Impact Report (EIR) because minor changes made to the project that are described below do not raise important new issues about the significant impacts on the environment.

PROJECT DESCRIPTION AND LOCATION

GP06-T-01/PDC06-130. General Plan text amendment request to increase the maximum allowable building height from 150 feet to 220 feet above ground level on an approximately 6.08-acre site located at the southeasterly corner of the intersection of Airport Parkway and Old Bayshore Highway (40, 50 Airport Parkway) and Planned Development Zoning request to rezone the site from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District for construction of 424 multiple dwelling units in two high-rise towers with ground floor commercial.

Council District 3. County Assessor's Parcel Number 230-29-065

The environmental impacts of this project were addressed by a Final EIR entitled, " North San Jose Area Development Policies Update," and findings were adopted by City Council Resolution No. 72768 on June, 2005. Specifically, the following impacts were reviewed and found to be adequately considered by the EIR:

Traffic and Circulation	Soils and Geology	Noise
Cultural Resources	Hazardous Materials	Land Use
Urban Services	Biotics	Air Quality
Aesthetics	Airport Considerations	Microclimate
Energy	Relocation Issues	Construction Period Impacts
Transportation	Utilities	Facilities and Services
Water Quality		

ANALYSIS:

The City of San Jose may take action on the proposed project as being within the scope of the North San Jose Area Development Policies Update Final EIR adequately addresses the environmental effects of the proposed project, and project would not result in significant environmental effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or ND.

Allen Tai/Chris Burton
Project Manager

Joseph Horwedel, Director
Planning, Building and Code Enforcement

4/26/07
Date

Akari Omidson
Deputy