CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Approval of an Ordinance to Amend and Restate the Curfew Hours and Aircraft Restrictions Provisions of the City of San Jose Airport Noise Control Program**

DATE: 10/16/2003

RECOMMENDATION

(a) Adoption of an urgency ordinance amending Title 25 of the San Jose Municipal Code by adding a new Chapter 25.03 to amend and restate the curfew hours and aircraft restrictions provisions of the City Of San Jose Airport Noise Control Program.

(b) Adoption of a resolution amending Resolution No. 57211 to amend and restate the curfew hours and aircraft restrictions provisions of the City Of San Jose Airport Noise Control Program.

CEQA: Resolution No. 67380 and 71451, PP 03-10-320

BACKGROUND

The area around the Norman Y. Mineta San Jose International Airport includes many residential neighborhoods. Recognizing that aircraft noise can result in disruption of conversations, sleep disturbance, and other impacts, Council adopted the Airport Noise Control Program (NCP) on February 7, 1984 (Resolution No. 57211). The stated goals of the NCP are as follows:

> "The goal of the San Jose Airport Noise Control Program is to encourage use of San Jose Airport by both air carrier and corporate/business jet aircraft with lower noise signature characteristics and to discourage Airport use by higher noise signature jet aircraft, both in the transport and non-transport category. The Plan encourages approach and departure flight procedures that will minimize the noise impact on neighboring communities and ultimately seeks to reduce the flight frequency in the most noise sensitive time periods by the older and noisier jet aircraft." (NCP, Section IV.)

The last part of this statement of goals addresses the issue of avoiding frequent flights during late night and early morning hours by noisier jet aircraft. The mechanism in the NCP that achieves this goal is time-of-day restrictions on takeoffs and landings by noisier jet aircraft, commonly referred to as the "curfew".

The existing curfew does not prohibit all takeoffs or landings during the curfew period. Rather, it restricts takeoffs or landings by jet aircraft based on the aircraft's noise classification and its weight. These criteria are as follows:

- The curfew differentiates between "Stage 2" and "Stage 3" aircraft. Stage 3 aircraft are those that meet the Federal Aviation Administration's (FAA) latest requirements for noise reduction. The Stage 3 aircraft are substantially quieter, especially during takeoffs, than the older Stage 2 aircraft.

- With regard to aircraft size, the curfew has two classes: "transport category" and "non-transport category" aircraft. "Transport category" aircraft are defined as those having a manufacturer designed certified maximum gross takeoff weight (MGTOW) of more than 75,000 pounds. "Non-transport category" aircraft are defined as those having a manufacturer designed certified MGTOW of less than 75,000 pounds.

Based upon these criteria, the existing curfew restrictions are summarized below.

EXISTING CURFEW CRITERIA			
	Time of Day		
	11 pm - 11:30 pm	**11:30 pm - 6:30 am**	**6:30 am - 7 am**
Stage 2 Transport Category Jets	Prohibited	Prohibited	Prohibited
Stage 3 Transport Category Jets	Allowed	Prohibited	Allowed
Stage 2 Non-Transport Category Jets	Prohibited	Prohibited	Prohibited
Stage 3 Non-Transport Category Jets	Allowed	Allowed	Allowed

The curfew includes exemptions that allow a scheduled airline flight to land at or depart from the Airport during curfew hours if one or more conditions that are beyond the control

of the air carrier occur. Examples of such conditions beyond the control of the air carrier include: 1) delays due to adverse weather conditions, 2) delays due to aircraft mechanical problems, 3) delays due to FAA air traffic control factors, and 4) delays due to compliance with federal, state or local security directives. As an example, if a scheduled flight departs from Chicago one hour late because of weather-related conditions, the NCP allows it to land at the Airport during the curfew hours. Takeoffs or landings during the curfew hours at the Airport are also allowed if: 1) conducted for emergency purposes during an emergency that has been officially proclaimed by the federal government or the State of California; or 2) the aircraft is operated by or on behalf of the federal government or the State of California. Operations by flights due to medical emergencies are also exempted from local restrictions such as the curfew under State law.

Since its enactment in 1984, the practical effect of the curfew has been that the air carriers and air cargo carriers have avoided the scheduling of flights by aircraft that have MGTOWs in excess of 75,000 pounds during the curfew hours. Jet aircraft operations that occur during the curfew are typically business/corporate jets (e.g., Cessna Citations, Learjets, Gulfstreams, etc.) and airline flights delayed for weather, mechanical, security or air traffic control reasons.

Advances in Aircraft Technology

When the curfew was adopted in 1984, there was a general correlation between the size (i.e., weight) of an aircraft and the noise produced by the aircraft. With few exceptions, the larger the aircraft, the higher the noise level it produced. This was one of the primary reasons that the above-described weight criterion was utilized. The weight criterion has been very successful in achieving the NCP goal regarding frequency of flights during the curfew hours.

In recent years, significant advances in technology, particularly in turbojet engine design, have reduced the correlation between aircraft noise and aircraft size. In fact, some of the newest and larger jet aircraft are quieter than some of the older and smaller jet aircraft. Thus, the use of the weight criterion in the curfew program is becoming less of a means of reducing noise impacts than it once was.

These advances in technology were a factor in a recent legal challenge to the curfew (Wing & a Prayer v. City of San Jose). In that case, the City was sued over its refusal to allow a Gulfstream V aircraft to operate during the curfew because its MGTOW exceeds 75,000 pounds. While the court did not directly rule on the merits of this argument, the judge indicated that he had concerns about the validity of the curfew's weight-based criterion.

Enforcement Provisions

The current NCP does not include any express provisions for the assessment of fines or penalties for curfew violations. However, the City may take action, as proprietor of the

Airport, to entirely prohibit use of the Airport by anyone who evidences or states intent to engage in continued or deliberate violations of Airport rules or regulations. The City is able to seek injunctive relief for violations of the curfew under state law and the San Jose Municipal Code provisions that require adherence to Airport rules and regulations. In addition, a pattern of violations will allow an action for unfair business practices under state law. Under the state unfair business practices law, civil penalties of up to $2,500 for each violation are among the remedies available.

ANALYSIS

The objectives of the proposed revisions to the NCP are as follows:

- Continue to implement and enforce the curfew as an important component of the NCP. The curfew is intended to minimize the noise-related impacts of the Airport on the surrounding neighborhoods during the late night and early morning hours of 11:00 p.m. to 7:00 a.m.

- Recognizing that the primary goal is to minimize the effects of aircraft noise, the criterion for determining which aircraft are eligible to operate should be based on noise generated by an aircraft.

- In terms of actual aircraft operations during the curfew hours, the selected noise-based criterion should duplicate the existing weight-based criterion to the greatest extent feasible, while at the same time maintaining the curfew's "grandfathered" status under the federal Airport Noise and Capacity Act and avoiding unjust discrimination that is prohibited under federal law.

- Implement a structure for the assessment of administrative citation fines for curfew violations.

Description Of Proposed Modifications

The proposed modifications to the curfew would delete the existing criterion that is based on whether an aircraft is "transport category" or "non-transport category".[1] This weight-based criterion would be replaced with the following noise-based criterion:

> "Jet aircraft operations at the Airport by Stage 1 Aircraft and Stage 2 Aircraft are prohibited between 11:00 p.m. and 7:00 a.m. Jet aircraft operations at the Airport by Stage 3 Aircraft are permitted between 11:30 p.m. and 6:30

[1]The proposed change would also delete all references to classes of operators (e.g., general aviation, air carrier, etc.) since the objective is the regulation of noise regardless of the purpose of a given flight.

a.m., provided that the aircraft's FAR Part 36 Certified Composite Noise Level is equal to or less than 89.0 EPNdB."

The proposed Curfew criteria can be summarized as follows:

PROPOSED CURFEW CRITERIA			
	Time of Day		
	11 pm - 11:30 pm	11:30 pm - 6:30 am	6:30 am - 7 am
Stage 2 Jets	Prohibited	Prohibited	Prohibited
Stage 3 Jets	Allowed	Allowed if Composite EPNdB is 89.0 or less	Allowed

The citation to FAR (Federal Aviation Regulations) Part 36 refers to a FAA-mandated process that every aircraft goes through when it is certified. The process quantifies the noise generated by a given aircraft type under standardized and controlled conditions. Where a given aircraft type can be outfitted with more than one engine make/model, certification data are produced for each aircraft/engine combination. Aircraft noise certification data are published by the FAA in Advisory Circular 36-1H and are expressed in terms of EPNdB, which stands for Effective Perceived Noise decibels (dB).

The FAA publishes FAR Part 36 certified noise levels for each aircraft type for takeoff, approach, and sideline conditions. Staff proposes to utilize the "composite" or arithmetic average of these three levels as its criterion, since it embodies the overall noise signature of a given aircraft type.

Practical Effect of Weight-based vs. Noise-based Criteria

Consistent with the objectives described above, the proposed noise criterion of 89.0 (composite EPNdB) was selected because it duplicates the existing weight-based criterion to the greatest extent feasible, consistent with applicable federal laws and regulations. Attachment A to this memorandum presents a comparison between the existing weight-based criterion and the proposed noise-based criterion with regard to aircraft that would and would not be eligible to operate during the curfew period.

Attachment A shows the following:

- No aircraft that can presently operate during the curfew would be prohibited from doing so if the proposed modification is approved.

- A limited number of aircraft that are presently prohibited from operating during the curfew will be allowed to operate if the proposed modification is approved. However,

the number of curfew-period flights at the Airport by such aircraft are projected to be very low due to the following factors: 1) the aircraft is no longer manufactured and is not operated by U.S. carriers, or 2) limited numbers of such aircraft are operated by the carriers that serve the Airport.

Administrative Citation Fines

Under the proposed modifications to the NCP, the Director of Aviation will have authority to issue administrative citation fines of $2,500 to any person responsible for each curfew violation. Any recipient of an administrative citation may request a hearing before the Airport Commission to contest either that there was a Curfew violation or that the recipient is, in fact, responsible for the violation. The decision of the Airport Commission regarding the administrative citation shall be final.

Environmental Analysis of Proposed Modifications

In coordination with the Planning, Building, and Code Enforcement (PBCE) Department, an environmental consultant has analyzed the proposed changes to the NCP and concluded that the proposed modifications would not result in any new significant noise impacts and/or noise impacts which are substantially different from those described in the 1997 SJC Master Plan Update EIR, as updated in the 2003 SJC Master Plan Update Supplemental EIR. A "Third Addendum" to the Master Plan EIR documenting this analysis was issued by PBCE on October 15, 2003. A copy of the Third Addendum is attached to this Memorandum.

FAA Approval of Proposed Modifications

City staff sought and received FAA approval of the proposed modifications to the NCP in order to comply with the requirements of the San Jose Municipal Code and applicable federal law.

San Jose Municipal Code section 25.04.550 requires that that City obtain approval from the FAA before making any modifications to the NCP.

In addition, the federal Airport Noise and Capacity Act of 1990 (ANCA) limits the ability of airport operators such as the City to regulate noise. However, noise control programs such as the current NCP that were in effect prior to enactment of ANCA in 1990 are "grandfathered" and remain enforceable.

As a general rule, ANCA requires that any subsequent modifications to a grandfathered program such as the NCP must: (a) be supported by a detailed economic cost benefit analysis; (b) comply with certain federal statutory criteria; and (c) be approved by the FAA. These stringent federal requirements effectively preclude an airport operator such as the City from making any changes to a grandfathered NCP that would impose additional curfew restrictions on aircraft that currently operate at the Airport.

However, ANCA does permit amendments to a grandfathered NCP without approval of the FAA if the proposed amendments do not reduce or limit aircraft operations or affect aircraft safety. Since the proposed revisions to the NCP do not, in fact, reduce or limit aircraft operations or affect aircraft safety at the Airport, formal FAA approval was not required under ANCA. However, City staff sought FAA review to ensure that the FAA did, in fact, concur with this conclusion.

Finally, as a condition of its receipt of federal airport improvement grants, the City is required under federal law and the terms of its grant agreements to make the Airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aviation users. Accordingly, City staff sought FAA concurrence that the proposed revisions to the NCP do not unjustly discriminate against any airport users.

By letter dated October 2, 2003, the FAA approved the proposed revisions to the NCP. More specifically, the FAA determined that the proposed revisions to the NCP are not subject to the ANCA requirements for modifications to a grandfathered NCP and that the proposed revisions are not unjustly discriminatory under either federal law or the terms of the City's grant agreements.

CONCLUSION

The proposed revision of the curfew provisions of the NCP from a weight-based to a noise-based program maintains the long-term community benefits of Airport noise mitigation that were the goal of the original NCP. In addition, the proposed revisions comply with applicable federal law as it has evolved subsequent to Council approval of the original NCP. These factors, combined with the express provisions for administrative citation fines in the proposed NCP, should ensure the continued effectiveness of the NCP.

It is recommended that Council adopt the urgency ordinance to take effect immediately to coincide with the expiration of the current moratorium on authorizations granted under Article X(B)(2) of the NCP. The urgency ordinance is necessary to maintain the status quo on limiting noisy flights during curfew hours and to provide for implementation of administrative citations for violations of the curfew provisions of the NCP.

PUBLIC OUTREACH

The proposed modifications to the NCP were presented to the Airport Commission for its review and recommendations at a public meeting held on October 15, 2003, and the Airport Commission approved a recommendation that Council approve the proposed modifications to the NCP. In addition, Airport staff has held and plans to continue to hold meetings with various neighborhood groups to discuss the proposed modifications

to the NCP. Airport staff has also held meetings with the airlines and fixed base operators to discuss the proposed modifications to the NCP.

COORDINATION

The proposed modifications to the NCP have been coordinated with the Airport Department and the Planning, Building and Code Enforcement Department.

CEQA

Resolution No. 67380 and 71451, PP 03-10-320.

RICHARD DOYLE
City Attorney

By _____
KEVIN FISHER
Sr. Deputy City Attorney

cc: Del Borgsdorf
Ralph G. Tonseth

ATTACHMENT A
COMPARISON OF EXISTING VERSUS PROPOSED CRITERIA

Jet Aircraft Manufacturer/Model	Can Aircraft Operate during the Curfew?	
	Current Curfew	Proposed Curfew
Airbus 300, 310, 319, 320, 321, 330, 340	all models prohibited	319-112 and 319-131 allowed under limited conditions*
BAE Systems 146-100A, 146-200A, 146-300, 146-300A, 146-RJ85, 146-RJ70, 146-RJ100	all models prohibited	146-100A allowed and 146-RJ70 allowed under limited conditions*
Beech Beechjet 400	allowed	no change
Boeing 707, 717, 727, 737, 747, 757, 767, 777	all models prohibited	717 allowed
Bombardier Global Express, CL-600, CL-601, CL-604, CRJ200, CRJ700	all models allowed	no change
Cessna Citation (all models), 560 Encore, 560XL Excel	all models allowed	no change
Dassault Falcon 10, Falcon 20, Falcon 50, Falcon 200, Falcon 900, Falcon 2000	all Stage 3 models allowed	no change
Embraer 135 (all models), 145 (all models)	all models allowed	no change
Fokker F28, F70, F100	all models prohibited	F70 and F100 allowed
Gulfstream G100, G200, G-II, G-III, G-IV, G-V	all Stage 3 models allowed	no change
Israel Aircraft 1124 Westwind (all models), 1125 Astra (all models), Galaxy	all models allowed	no change
Learjet 23, 24, 25, 28, 29, 31, 35, 36, 45, 55, 60	all Stage 3 models allowed	no change
McDonnell Douglas DC-8, DC-9, DC-10, MD-11, MD-80, MD-87, MD-90	all models prohibited	MD-90 allowed
Raytheon Hawker 125, C-29A, 390 Premier	all Stage 3 models allowed	no change
Sabreliner 40, 60, 65, 75A, 80	all Stage 3 models allowed	no change

*Per FAA Advisory Circular 36-1H, this aircraft may qualify if it is configured with noise-reducing equipment and it is operated at less than its maximum allowable weight. The aircraft operator would be required to demonstrate that the aircraft would comply for the request flight(s).

STATUS OF AIRCRAFT THAT WOULD BE ELIGIBLE TO OPERATE DURING THE CURFEW

Aircraft Type	Number Built to Date	Operated by U.S. Carriers	Operated by SJC Carriers	Notes
Airbus 319-112	148	Air Canada Mexicana US Airways	Mexicana	In production. 11 owned by Mexicana but not currently used at SJC.
Airbus 319-131	88	United	United	In production. 55 owned by United. In use at SJC on flights to/from Chicago.
BAe 146-100A	35	No	No	No longer manufactured.
BAe 146-RJ70	12	No	No	No longer manufactured.
Boeing 717	117	AirTran Hawaiian Midwest	No	In production.
Fokker 70	66	No	No	No longer manufactured.
Fokker 100	283	American Mexicana	American Mexicana	No longer manufactured. 75 owned by American but not currently used at SJC. 11 owned by Mexicana but not currently used at SJC.
McDonnell MD-90	120	Delta	Delta	No longer manufactured. 16 owned by Delta. In use at SJC on flights to/from Salt Lake City.

Note: Current SJC carriers are Alaska/Horizon, America West, American/American Eagle, ATA, Continental, Delta, Frontier, Mexicana, Northwest, Southwest, and United/Skywest.

Sources: OAG, Boeing Corporation, Commercial Jet Aircraft Databases, Airliners.net, official airline websites.

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL AIRPORT
MASTER PLAN UPDATE PROJECT
SAN JOSE, CA

THIRD
ADDENDUM TO THE
ENVIRONMENTAL IMPACT REPORT

CITY OF SAN JOSE

OCTOBER 15, 2003

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SECTION 1. INTRODUCTION

This document is an Addendum to an Environmental Impact Report (EIR) on the *Master Plan Update* for the Norman Y. Mineta San Jose International Airport (SJC), which EIR was certified in June 1997, and updated with a Supplemental EIR that was certified in January 2003.

The purpose of this Addendum is to disclose the environmental impacts associated with a proposed change to a component of SJC's Noise Control Program that restricts aircraft operations during the hours of 11:00 p.m. and 7:00 a.m., commonly referred to as the "Airport Curfew". The SJC Noise Control Program is a noise mitigation measure that was adopted when the *Master Plan Update* was approved in 1997.

Under Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, an Addendum to a previously-certified EIR may be prepared by the Lead Agency when a proposed change will not lead to a significant effect being substantially more severe than shown in the previous EIR. [Note: If an analysis were to show that a significant effect *would* be substantially more severe than shown in the previous EIR, then a Subsequent or Supplemental EIR would be required (i.e., an Addendum would not comply with CEQA).]

SECTION 2. OVERVIEW OF THE SAN JOSE INTERNATIONAL AIRPORT MASTER PLAN UPDATE PROJECT

2.1 DEVELOPMENT AND APPROVAL OF THE MASTER PLAN UPDATE

SJC is one of the three primary airports which serve the San Francisco Bay Area. The Airport, which is owned and operated by the City of San Jose, is located on a site of approximately 1,050 acres in Santa Clara County at the southerly end of San Francisco Bay, as shown on Figure 1. The Airport is generally bounded by U.S. 101 on the north, the Guadalupe River and State Route 87 on the east, Interstate 880 on the south, and Coleman Avenue and De la Cruz Boulevard on the west, as shown on Figure 2.

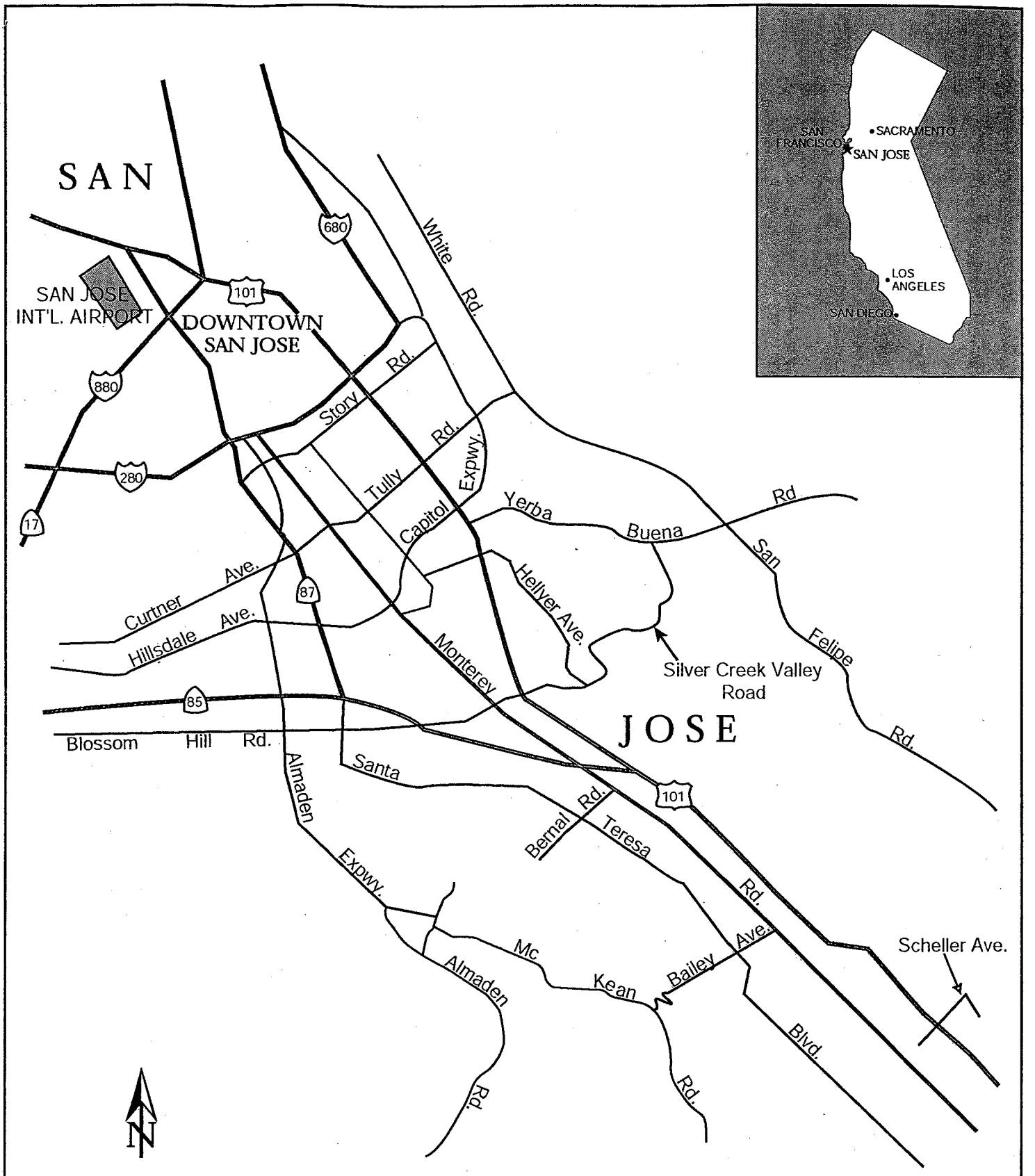
In 1988, the City initiated a planning process to update its 1980 Airport Master Plan for SJC. The City's aviation consultants prepared demand forecasts for SJC and evaluated a series of alternative development scenarios which would adequately accommodate some or all of the projected growth in passenger and air cargo traffic at the Airport through a year 2010 planning horizon. Between 1988 and 1995, numerous meetings, workshops, and hearings occurred for the purpose of determining the range and scope of alternatives to be formally evaluated in an EIR. The City began the formal preparation of the Draft EIR for the Master Plan Update in 1995. The Draft EIR, which evaluated four alternatives (including the CEQA-mandated No Project Alternative), was published and circulated in October of 1996. The Final EIR was certified in June of 1997. The SJC Master Plan Update was approved by the San Jose City Council on June 10, 1997.

The approved SJC Master Plan Update consists of a comprehensive and integrated package of improvements to airside and landside facilities at SJC, such improved facilities having the design capacity to fully accommodate the 2010 forecast demand for air passenger and air cargo service in a comfortable and efficient manner. Table 1 summarizes the primary improvements contained in the approved SJC Master Plan Update.

2.2 IMPLEMENTATION OF THE MASTER PLAN UPDATE: 1997 - 2003

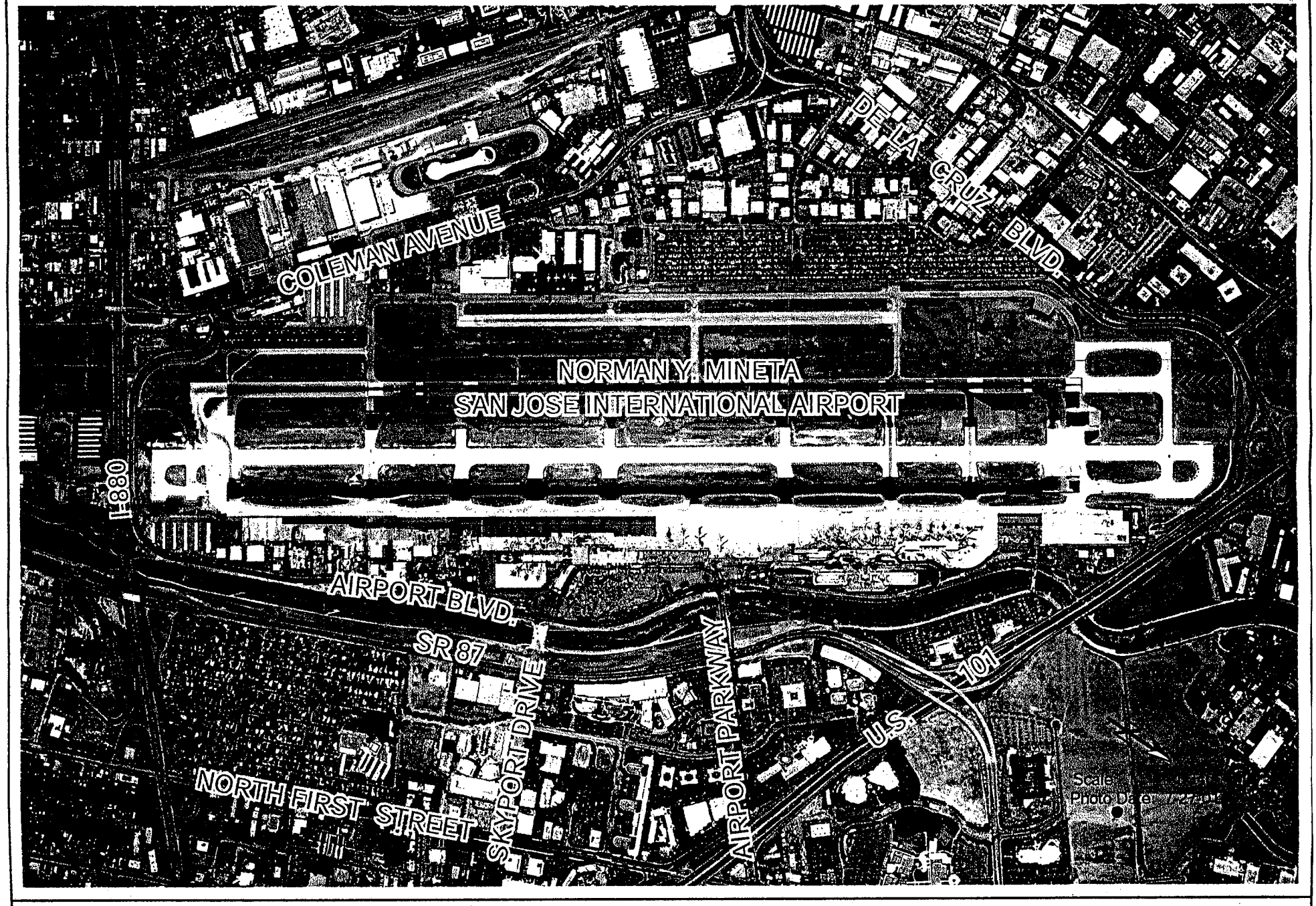
Subsequent to the approval of the Master Plan Update in 1997, construction of various capital improvement projects has been completed or is currently underway. The most notable projects completed to date are the reconstruction/lengthening of Runway 12L/30R to 11,050 feet and the reconstruction of Runway 12R/30L. Construction of improvements to the on-Airport roadway system are currently underway.

Various amendments to the Master Plan Update have also been approved by the San Jose City Council since 1997. Table 2 lists and describes those amendments that have been approved to date.



REGIONAL MAP

FIGURE 1 .



VICINITY MAP

FIGURE 2

TABLE 1

SUMMARY OF KEY PROJECTS IN THE APPROVED SJC MASTER PLAN UPDATE[a]

Project Type	Description of Project
Airfield Improvements	- Reconstruct/lengthen Runway 12L/30R to 11,050 feet - Reconstruct/lengthen Runway 12R/30L to 11,000 feet
Passenger Terminals	- Modify existing terminals to create centralized passenger terminal with 49 air carrier gates and 1,075,000 square feet[b]
Public Parking Facilities	- Construct parking garages with 16,200 spaces[c]
Rental Car Facilities	- Construct consolidated 10-level parking garage with 10,000 spaces, including 2,000 ready/return spaces
Employee Parking Facilities	- Construct parking garage with 2,600 spaces
Air Cargo Facilities	- Construct new all-cargo facilities totalling 1,897,900 square feet - Construct new belly freight facilities totalling 460,500 square feet
Aviation Support Facilities	- Construct new fuel storage facility with capacity of 4,000,000 gallons
General Aviation Facilities	- Limit general aviation facilities to the southwest side of the Airport and reduce aircraft storage capacity to 360 based aircraft
Transportation and Access	- Construct on-Airport APM - Convert/upgrade Terminal Drive to 2-level roadway - Construct grade separations on Airport Boulevard at Skyport Drive and Airport Boulevard - Construct APM between Airport and Metro/Airport LRT Station

[a]Section 2.3.1 (beginning on page 2-5) of the Final EIR contains a listing and description of all SJC Master Plan projects.

[b]Number of air carrier gates limited to 40 by Section 25.04.300(B)(1) of the San Jose Municipal Code.

[c]Number of public parking spaces limited to 12,700 by Section 25.04.300(B)(3) of the San Jose Municipal Code.

Source: SJC Master Plan, as amended through 04/29/03.

TABLE 2

AMENDMENTS TO THE 1997 SJC MASTER PLAN UPDATE

Amendment Number	Description of Amendment	Amendment Type	Approval Date	CEQA Clearance
1	Interim off-Airport Office Space and Reuse of Vacated On-Airport Space for Air Carrier-related Uses	Minor	June 1998	Airport Master Plan EIR Reuse
2	Expanded Fixed Base Operator (FBO) Leasehold for ACM Aviation	Minor	June 1999	Airport Master Plan EIR Reuse
3	Interim Relocation of Federal Inspection Services (FIS) Facility	Minor	June 1999	Airport Master Plan EIR Reuse
4	Interim Rental Car Ready/Return Facility Consolidation	Minor	April 2000	Airport Master Plan EIR Reuse
5	Terminal Area Development Program Modifications (including terminal, parking garage, and roadway project revisions, as well as associated interim facility changes)	Minor	November 2001	Airport Master Plan EIR Addendum #1
6	94th Aero Squadron Early Lease Termination/Removal and Interim Reuse for Runway Project Cement Plant	Minor	December 2001	Airport Master Plan EIR Reuse
7	Relocation of FAA RTR Facility to North Side of ATCT and Reuse of Existing Site for General Aviation	Minor	February 2002	Airport Master Plan EIR Reuse
8	Automated People Mover (APM) between Airport and Metro/Airport LRT Station & noise update	Minor	March 2003	Airport Master Plan Supplemental EIR
9	Additional General Aviation Facilities on west side of Airport & Designate Employee Parking as ultimate use in Terminal A Parking Garage	Major	April 2003	Airport Master Plan EIR Addendum #2

[a]Per Section 25.02.300 of the San Jose Municipal Code, amendments to the Master Plan Update are classified as "minor" or "major". The criteria for defining minor and major amendments are set forth in that same section of the Municipal Code.

ATCT = Air Traffic Control Tower RTR = Remote Transmitter and Receiver

SECTION 3. SCOPE OF THIS ADDENDUM

3.1 OVERVIEW

As described on page 1, the City proposes to modify the existing Airport Curfew by changing the criterion for an aircraft to operate during the curfew hours from one that is weight-based to one that is noise-based.

The following section provides an overview of the Airport Curfew's history, current structure, and the events that have lead to this proposed modification.

3.2 BACKGROUND

The area in the environs of SJC includes many residential neighborhoods. Recognizing that aircraft noise can result in disruption of conversations, sleep disturbance, etc., the San Jose City Council adopted the SJC Noise Control Program on February 7, 1984. The goals of the Noise Control Program are as follows:

> "The goal of the San Jose Airport Noise Control Program is to encourage use of San Jose Airport by both air carrier and corporate/business jet aircraft with lower noise signature characteristics and to discourage Airport use by higher noise signature jet aircraft, both in the transport and non-transport category. The Plan encourages approach and departure flight procedures that will minimize the noise impact on neighboring communities and ultimately seeks to reduce the flight frequency in the most noise sensitive time periods by the older and noisier jet aircraft." (NCP, Section IV.)

The last part of this statement of goals addresses the issue of avoiding frequent flights during late night and early morning hours by noisier jet aircraft. The mechanism in the Noise Control Program which achieves this goal is time-of-day restrictions on operations[1] by noisier jet aircraft, commonly referred to as the "Airport Curfew".

The existing Airport Curfew does not prohibit all airport operations during the curfew period. Rather, it restricts operations by jet aircraft based on the aircraft's noise classification and its weight. These criteria are as follows:

[1] An aircraft "operation" consists of a takeoff or a landing.

>> The curfew differentiates between "Stage 2" and "Stage 3" aircraft. Stage 3 airplanes are those which meet the FAA's latest requirements for noise reduction. The Stage 3 aircraft are substantially quieter, especially during takeoffs, than the older Stage 2 aircraft.

>> With regard to aircraft size, the curfew has two classes: "transport category" and "non-transport category" aircraft (City of San Jose, 1984). "Transport category" aircraft are defined as those having a manufacturer designed certified maximum gross takeoff weight (MGTOW) of more than 75,000 pounds. "Non-transport category" aircraft are defined as those having a manufacturer designed certified MGTOW of less than 75,000 pounds.

Based upon these criteria, the existing Airport Curfew restrictions are shown in Table 3, below.

TABLE 3

EXISTING CURFEW CRITERIA

	Time of Day		
	11 pm - 11:30 pm	**11:30 pm - 6:30 am**	**6:30 am - 7 am**
Stage 2 Transport Category Jets	Prohibited	Prohibited	Prohibited
Stage 3 Transport Category Jets	Allowed	Prohibited	Allowed
Stage 2 Non-Transport Category Jets	Prohibited	Prohibited	Prohibited
Stage 3 Non-Transport Category Jets	Allowed	Allowed	Allowed

The curfew contains exemptions that allows a scheduled airline flight to land at or depart from SJC during curfew hours if one or more of the following conditions which are beyond the control of the air carrier occur: 1) delays due to adverse weather conditions, 2) delays due to aircraft mechanical problems, 3) delays due to FAA air traffic control factors, and 4) delays due to compliance with federal, state, or local security directives. As an example, if a scheduled flight departs from Chicago one hour late due to weather-related conditions, the noise control program allows it to land at SJC during the curfew hours. Other exemptions are for 1) operations due to medical emergencies, 2) operations conducted for emergency purposes during a declared emergency, and 3) aircraft operated by or on behalf of the federal government or the State of California.

Since its enactment in 1984, the practical effect of the curfew criteria has been that the air carriers and air cargo carriers have, for the most part, avoided the scheduling of flights during the curfew hours. This is due to the fact that these flights are *generally* operated by larger aircraft that have MGTOWs in excess of 75,000 pounds.[2] Jet aircraft operations that occur during the curfew are limited to those by various business/corporate jets (e.g., Cessna Citations, Learjets, Gulfstreams, etc.) and airline flights delayed for weather, mechanical, or air traffic control reasons.

Advances in Aircraft Technology

When the curfew was adopted in 1984, there was a general correlation between the size (i.e., weight) of an airplane and the noise produced by the airplane. With few exceptions, the larger the airplane, the higher the noise level it produced. This was one of the primary reasons that the above-described weight criterion was utilized. The weight criterion has been very successful in achieving the noise control program goal regarding a reduction in the frequency of flights during the curfew hours.

In recent years, significant advances in technology, particularly in turbojet engine design, have led to the situation wherein larger aircraft are not necessarily noisier aircraft. In fact, some of the newest and larger jet aircraft are demonstrably quieter than some of the older and smaller jet aircraft. Thus, the use of the weight criterion in the curfew program is becoming a less effective means of reducing noise impacts than it once was.

These advances in technology were a factor in a recent legal challenge to the curfew (Wing & A Prayer v. City of San Jose). In that case, the City was sued over its refusal to allow a Gulfstream V aircraft to operate during the curfew because its MGTOW exceeds 75,000 pounds. The plaintiff contended, in part, that this refusal was unjust and discriminatory because the aircraft was in fact substantially quieter than smaller aircraft that are permitted to operate during the curfew. While the court did not directly rule on the merits of this argument, the judge indicated that he had concerns about the validity of the curfew's weight-based criterion.

In light of these events, the City proposes to modify the Airport Curfew such that the criteria are solely noise-based.

3.3 OBJECTIVES

The City's objectives in proposing this change are as follows:

1. Continue to implement and enforce the Airport Curfew as an important component of the SJC Noise Control Program. The Airport Curfew is intended to minimize the noise-related impacts of the Airport on the surrounding neighborhoods during the late

[2]In recent years, some airlines have purchased smaller and quieter jets with MGTOWs less than 75,000 pounds. These aircraft, commonly referred to as "regional jets", are permitted to operate during the curfew. No such flights are currently scheduled, although they have occurred within the past year.

night and early morning hours of 11:00 p.m. to 7:00 a.m.

2. Recognizing that the primary goal is to minimize the effects of aircraft noise, the criterion for determining which aircraft are eligible to operate should be based on the noise generated by an aircraft.

3. In terms of actual aircraft operations during the curfew hours, the selected noise-based criterion should duplicate the existing weight-based criterion to the greatest extent feasible, while at the same time maintaining the curfew's "grandfathered" status under the federal Airport Noise & Capacity Act (ANCA), and avoiding unjust discrimination that is prohibited under federal law.

3.4 DETAILED DESCRIPTION OF PROPOSED MODIFICATION

The proposed modification to the Airport Curfew would delete the existing criterion that is based on whether an aircraft is "transport category" or "non-transport category".[3] This deleted weight-based criterion would be replaced with the following noise-based criterion (which is explained below):

> "Jet aircraft operations at the Airport by Stage 3 Aircraft are permitted between 11:30 p.m. and 6:30 a.m., provided that the aircraft's FAR Part 36 Certified Composite Noise Level is equal to or less than 89.0 EPNdB."

The existing criteria that prohibits operations by all Stage 2 jet aircraft between the hours of 11:00 p.m. and 7:00 a.m. would not change.

Table 4 summarizes the proposed criteria.

The citation to FAR (**F**ederal **A**viation **R**egulations) Part 36 refers to a FAA-mandated process that every aircraft goes through when it is certified. The process quantifies the noise generated by a given aircraft type under standardized and controlled conditions. Where a given aircraft type can be outfitted with more than one engine make/model, certification data are produced for each aircraft/engine combination. Aircraft noise certification data are published by the FAA in Advisory Circular 36-1H and are expressed in terms of EPNdB, which stands for **E**ffective **P**erceived **N**oise decibels (**dB**).[4]

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[3]The proposed change would also delete all references to classes of operators (e.g., general aviation, air carrier, etc.) since the objective is the regulation of noise irrespective of the purpose of a given flight.

[4]EPNdB is not the same as, and cannot be compared to, the A-weighted decibels (dBA) that are commonly used in noise reports and environmental documents.

TABLE 4 PROPOSED CURFEW CRITERIA			
	Time of Day		
	11 pm - 11:30 pm	11:30 pm - 6:30 am	6:30 am - 7 am
Stage 2 Jets	Prohibited	Prohibited	Prohibited
Stage 3 Jets	Allowed	Allowed if Composite EPNdB is 89.0 or less	Allowed

The FAA publishes FAR Part 36 certified noise levels for each aircraft type for takeoff, approach, and sideline conditions. The City proposes to utilize the "composite" or arithmetic average of these three levels as its criterion since it embodies the overall noise signature of a given aircraft type.

Practical Effect of Weight-based vs. Noise-based Criteria

Consistent with the objectives described in Section 3.3, the proposed noise criterion of 89.0 (composite EPNdB) was selected because it duplicates the existing weight-based criterion to the greatest extent feasible, consistent with applicable federal laws and regulations. Table 5 presents a comparison between the existing weight-based criterion and the proposed noise-based criterion with regard to those aircraft that would and would not be eligible to operate during the curfew period.

The data in Table 5 can be summarized as follows:

>> No aircraft that can presently operate during the curfew would be prohibited from doing so if the proposed modification is approved.

>> A limited number of aircraft that are presently prohibited from operating during the curfew will be allowed to operate if the proposed modification is approved. However, as is analyzed subsequently in Section 4 of this Addendum, the number of curfew-period flights at SJC by such aircraft are projected to be very low due to the following factors: 1) the eligible aircraft is no longer manufactured and is not operated by U.S. carriers, or 2) the eligible aircraft is not operated by any of the carriers that serve SJC.

The City requested that the FAA review the proposed modification to the Airport Curfew. In a letter to the City dated October 2, 2003, the FAA concluded that 1) the proposal would not invalidate the curfew's "grandfathered" status under ANCA, 2) the proposal would not constitute a new airport access restriction under ANCA, and 3) the proposal would not be unreasonable or unjustly discriminatory. A copy of the FAA letter is reproduced in Appendix A of this Addendum.

TABLE 5

COMPARISON OF EXISTING VERSUS PROPOSED CRITERIA

Jet Aircraft Manufacturer/Model	Can Aircraft Operate during the Curfew?	
	Existing Criteria	Change if Proposed Criteria is Adopted
Airbus 300, 310, 319, 320, 321, 330, 340	all models prohibited	A319-112 and A319-131 allowed under limited conditions*
BAe Systems 146-100A, 146-200A, 146-300, 146-300A, 146-RJ85, 146-RJ70, 146-RJ100	all models prohibited	BAe146-100A allowed and BAe146-RJ70 allowed under limited conditions*
Beech Beechjet 400	allowed	no change
Boeing 707, 717, 727, 737, 747, 757, 767, 777	all models prohibited	Boeing 717 allowed
Bombardier Global Express, CL-600, CL-601, CL-604, CRJ200, CRJ700	all models allowed	no change
Cessna Citation (all models), 560 Encore, 560XL Excel	all models allowed	no change
Dassault Falcon 10, Falcon 20, Falcon 50, Falcon 200, Falcon 900, Falcon 2000	all Stage 3 models allowed	no change
Embraer 135 (all models), 145 (all models)	all models allowed	no change
Fokker F28, F70, F100	all models prohibited	F70 and F100 allowed
Gulfstream G100, G200, G-II, G-III, G-IV, G-V	all Stage 3 models allowed	no change
Israel Aircraft 1124 Westwind (all models), 1125 Astra (all models), Galaxy	all models allowed	no change
Learjet 23, 24, 25, 28, 29, 31, 35, 36, 45, 55, 60	all Stage 3 models allowed	no change
McDonnell Douglas DC-8, DC-9, DC-10, MD-11, MD-80, MD-87, MD-90	all models prohibited	MD-90 allowed
Raytheon Hawker 125, C-29A, 390 Premier	all Stage 3 models allowed	no change
Sabreliner 40, 60, 65, 75A, 80	all Stage 3 models allowed	no change

*Per FAA Advisory Circular 36-1H, this aircraft may qualify if it is configured with noise-reducing equipment and it is operated at less than its maximum allowable weight. The aircraft operator would be required to demonstrate that the aircraft would comply for the request flight(s), per municipal code.

SECTION 4. ENVIRONMENTAL IMPACTS OF THE PROPOSED MODIFICATION TO THE CURFEW

As discussed on page 1, the SJC Noise Control Program, of which the Airport Curfew is a part, is a noise mitigation measure that was adopted when the *Master Plan Update* was approved. Noise mitigation measures were required under CEQA because the EIR had concluded that the *Master Plan Update* would result in significant noise impacts. In this context, the purpose of this analysis is to answer the following question:

> "If the proposed modification to the Airport Curfew is implemented, would the noise impacts of the *Master Plan Update* be substantially more severe than previously disclosed in the EIR?"

The analysis required to answer this question requires a 2-step process:

>> Determine how many additional aircraft operations will occur during the curfew period; and
>> Quantify the noise impacts of the additional aircraft operations

4.1 ADDITIONAL AIRCRAFT OPERATIONS DURING CURFEW

The number of additional curfew period operations that would occur under the modified Airport Curfew were projected for the *Master Plan Update* horizon year of 2010 by *The Campbell-Hill Aviation Group, Inc.* and *David J. Powers & Associates, Inc.* Projected operations were quantified based on anticipated market demand for passenger airline, air cargo, and charter flights.[5]

Table 5 lists those jet aircraft types that would be permitted to operate during the curfew under the proposed noise-based criterion, such aircraft currently prohibited from operating during the curfew. The eight aircraft types are as follows: Airbus 319-112, Airbus 319-131, BAe 146-100A, BAe 146-RJ70, Boeing 717, Fokker 70, Fokker 100, and McDonnell Douglas MD-90. Of these aircraft types, the Airbus 319-112, the Airbus 319-131, and the BAe 146-RJ70 could operate only under limited conditions (i.e., if operated at substantially less than their maximum allowable weights).

Table 6 shows the current status of these eight aircraft types. Five types are no longer manufactured and three of the five are not operated by any U.S. carriers. Of the airlines and air cargo carriers that provide service at SJC, the MD-90 is operated by Delta Airlines, the Airbus 319-112 is operated by Mexicana Airlines, the Airbus 319-131 is operated by United Airlines, and the Fokker 100 is operated by Mexicana and American Airlines. The MD-90 is in use at SJC on some Delta flights to/from Salt Lake City and the Airbus 319-131 is in use at SJC on United flights to/from Chicago.

[5] "Effect of Noise-Based Criterion on Curfew Operations at Norman Y. Mineta San Jose International Airport", The Campbell-Hill Aviation Group, 10/10/03.

TABLE 6

STATUS OF AIRCRAFT THAT WOULD BE ELIGIBLE TO OPERATE DURING THE CURFEW

Aircraft Type	Number Built to Date	Operated by U.S. Carriers	Operated by SJC Carriers	Notes
Airbus 319-112	148	Air Canada Mexicana US Airways	Mexicana	In production. 11 owned by Mexicana but not currently used at SJC.
Airbus 319-131	88	United	United	In production. 55 owned by United. In use at SJC on flights to/from Chicago.
BAe 146-100A	35	No	No	No longer manufactured.
BAe 146-RJ70	12	No	No	No longer manufactured.
Boeing 717	117	AirTran Hawaiian Midwest	No	In production.
Fokker 70	66	No	No	No longer manufactured.
Fokker 100	283	American Mexicana	American Mexicana	No longer manufactured. 75 owned by American but not currently used at SJC. 11 owned by Mexicana but not currently used at SJC.
McDonnell MD-90	120	Delta	Delta	No longer manufactured. 16 owned by Delta. In use at SJC on flights to/from Salt Lake City.

Note: Current SJC carriers are Alaska/Horizon, America West, American/American Eagle, ATA, Continental, Delta, Frontier, Mexicana, Northwest, Southwest, and United/Skywest.

Sources: OAG, Boeing Corporation, Commercial Jet Aircraft Databases, Airliners.net, official airline websites.

The market demand for curfew period flights was quantified based on an analysis of SJC's flight schedule, as well as that from the other three Northern California commercial airports, which are San Francisco (SFO), Oakland (OAK), and Sacramento (SMF). The flight schedules at SFO, OAK, and SMF provide an excellent basis for projecting the demand for curfew flights at SJC since none of the three airports have curfews.

In order to obtain a worst-case/long-term market demand, SFO flight schedules from June 2000 were also utilized. This represents market demand prior to the burst of the "dot.com bubble" and prior to the terrorist attacks of September 11, 2001.[6] Each curfew period flight that was occurring at SFO was analyzed for its potential to occur at SJC using one of the eight aircraft types listed in Table 6.

In addition to an assessment of the flight schedules at the other Northern California airports, SJC's flight schedule was analyzed, particularly with regard to flights that are scheduled to arrive or depart within 30 minutes of the curfew (identified as "curfew shoulder periods").[7] Such flights were considered candidates for being rescheduled into the curfew.

4.1.1 Analysis Results: Scheduled Airline Service

Existing Flights to be Shifted into the Curfew

There are currently 19 passenger flights and 5 passenger flights that arrive/depart SJC during the morning and nighttime curfew shoulder periods, respectively. Of these 24 flights, it was determined - using the methodology described above - that only one flight would be shifted into the curfew period under the proposed modification: the existing Delta Airlines flight to Salt Lake City using an MD-90 aircraft would likely depart SJC at approximately 6:05 a.m., instead of the current 6:30 a.m. departure.

None of the other 23 flights are expected to shift into the curfew due primarily to one or more of the following factors:

>> The airline does not have one of the eligible aircraft in its fleet; or

>> The destination is beyond the range of the eligible aircraft; or

>> There is no market demand for earlier/later service.

[6]Given the substantial reduction in the demand for air service that has occurred in the past two years, especially in the greater San Jose area, this methodology provides a good basis for estimating future (i.e., 2010) demand at SJC under an assumption that the economy will eventually recover, leading to the reinstatement of some flights that have been discontinued.

[7]The 30 minutes prior to the start of the curfew at 11:30 p.m. and the 30 minutes following the end of the curfew at 6:30 a.m. are commonly referred to as the "curfew shoulder periods".

New Flights during the Curfew

In June 2000, there were 50 flights to/from SFO during the 11:30 p.m. to 6:30 a.m. time period. Each of these flights was analyzed to determine if there would be a market demand for such a flight at SJC using one of the eligible aircraft types. Based on this analysis, it was determined that the proposed modification to the curfew would result in 3 new daily flights at SJC during the curfew: 1) a 6:00 a.m. departure to Los Angeles by Delta Airlines using a MD-90 aircraft, 2) a 1:00 a.m. arrival from Chicago on United Airlines using an Airbus 319-131 aircraft, and 3) a 12:20 a.m. arrival from Washington/Dulles on United Airlines using an Airbus 319-131 aircraft.

TABLE 7

PROJECTED 2010 PASSENGER SERVICE DURING CURFEW

SJC Time	Operation Type	Airline	Origin/Destination	Aircraft
Existing SJC Flights to be Rescheduled into the Curfew				
6:05 a.m.	Departure	Delta	Salt Lake City	MD-90
New Flight at SJC				
6:00 a.m.	Departure	Delta	Los Angeles	MD-90
12:20 a.m.	Arrival	United	Washington/Dulles	Airbus 319-131
1:00 a.m.	Arrival	United	Chicago	Airbus 319-131

Source: The Campbell-Hill Aviation Group, Inc. and David J. Powers & Associates, Inc.

As was the case with the above analysis pertaining to the shifting of shoulder period flights into the curfew, most of the curfew period flights at SFO were found to not qualify for a similar curfew period flight at SJC. This conclusion was reached based on the following factors as applied to the SFO flights:

>> The airline operating the SFO flight does not operate at SJC and would not do so based solely for the purpose of operating during the curfew; or

>> The airline operating the SFO flight operates at SJC but does not have one of the eligible aircraft in its fleet; or

>> The destination is beyond the range of the eligible aircraft.

4.1.2 Analysis Results: Air Cargo Service

Air cargo operators that provide service at SJC are Federal Express, UPS, Emery Worldwide, Airborne Express, and Air Transport (BAX). These same carriers operate at SFO, OAK, and SMF.

While there is a demand for air cargo flights to be scheduled during the curfew period, as evidenced by such flights currently operating at SFO, OAK, and SMF, the proposed modification to the Airport Curfew will not result in such flights at SJC. The reason for this conclusion is that none of the air cargo carriers have any of the eligible aircraft in their fleets.

4.1.3 Analysis Results: Air Charter Service

Air charter flights currently operate at SJC during non-curfew hours. The most common charters are those to/from Nevada casinos, those to/from Hawaii, those used to transport sports teams between various cities, and those used to move freight. Most charters are booked through companies that specialize in such. Based on Airport records, the charter companies that utilize SJC are Allegiant Air, Champion Air, Charter America, Kitty Hawk, Pleasant Hawaiian Holidays, Ryan International, Sky King, and USA Jet.

It is known that there is some demand for curfew period charter flights. For example, the San Jose Sharks have requested permission to operate such flights at SJC in the past. However, none of these charter companies have aircraft in their fleets that would be eligible to operate during the curfew if the proposed modification is approved. Therefore, the proposed modification is not anticipated to result in new curfew period flights.

4.2 NOISE IMPACTS RESULTING FROM ADDITIONAL AIRCRAFT OPERATIONS DURING CURFEW

The above analysis concluded that the proposed modification to the existing Airport Curfew would result in four daily flights during the curfew by the year 2010 (see Table 7). As part of this Addendum, the noise impacts of these four flights were quantified. For consistency, and in accordance with state and federal regulations, the noise analysis utilized the same methodology and thresholds as those contained in the 1997 Master Plan EIR, as updated by the 2003 Master Plan Supplemental EIR. This involved the use of the FAA's Integrated Noise Model (INM), which is the tool employed for airport noise analyses. Using the INM database, projected numbers of operations, and factors related to runway usage and flight tracks at SJC, the noise that would be produced by the four additional curfew operations was quantified.[8]

[8]For a detailed discussion of the methodology used to analyze aircraft-generated noise, the reader is referred to Section 3.5 of the 1997 EIR and Section 2.2.2 of the 2003 Supplemental EIR.

In calculating the noise impacts of these additional curfew operations, each aircraft noise event is treated as if *ten* aircraft noise events had occurred. This calculation "weighting" or "penalty" is included in the Community Noise Equivalent Level (CNEL) to account for the assumption that noise events occurring during these hours are more intrusive or annoying to the average person than events occurring during the daytime hours.

Noise levels produced by the additional curfew operations were added to overall noise levels for 2010 for the approved *Master Plan Update*. This process was undertaken for each of the 20 reference grid point locations located in the vicinity of SJC. These locations are listed in Table 8 and are the same as those used in the 1997 EIR and 2003 Supplemental EIR.

The results of the noise analysis are shown in Table 9. The data in Table 9 indicate that the increase in the CNEL at the 20 reference grid locations due to the additional aircraft operations would range from a low of zero decibels to a high of 0.1 decibels. These increases are substantially below the most restrictive of the noise thresholds of significance utilized in the EIR and Supplemental EIR, which is an increase of 1.5 decibels.

The projected 2010 CNEL contours with the additional curfew operations are virtually identical to the approved *Master Plan Update* 2010 CNEL contours. For example, changes in the size of the 65-dB CNEL contour are very minimal (i.e., less than 0.8%).

Conclusion: The proposed modification to the Airport Curfew would not result in any new significant noise impacts and/or noise impacts which are substantially different from those described in the 1997 SJC Master Plan Update EIR, as updated in the 2003 SJC Master Plan Update Supplemental EIR.

TABLE 8

REFERENCE GRID LOCATIONS

Reference Number	Location/Land Use	City
1	RMS 10 - Residential	Santa Clara
2	RMS 11 - Residential	Santa Clara
3	Agnew Park - SW corner Agnew Rd/Cheeney St.	Santa Clara
4	Convalescent Hospital - North side Clyde Ave. @ Loch Lomond St.	Santa Clara
5	RMS 5 - Vacant (Airport land, adjacent to Guadalupe River Park)	San Jose
6	Heritage Rose Garden - SE corner Taylor St./Spring St. (Airport land)	San Jose
7	Performing Arts Center - SW Corner Almaden Blvd./Park Ave.	San Jose
8	RMS 8 - Montague School/Park	Santa Clara
9	RMS 9 - Agnews State Hospital	Santa Clara
10	RMS 14 - Fairway Glen Park/Hughes School	Santa Clara
11	RMS 1 - Washington School	San Jose
12	RMS 4 - Bellarmine School	San Jose
13	RMS 13 - Residential	San Jose
14	Alviso Community Ctr - SE corner San Jose Alviso Rd./Liberty St.	San Jose
15	Cottage Trailer Grove - SW corner Monterey Hwy./San Jose Ave.	San Jose
16	Agnews State Hospital - SW Corner Lick Mill Rd./Lick Mill Blvd.	Santa Clara
17	Bachrodt School - SE corner Sonora Ave./Forrestal Ave.	San Jose
18	Hester School - SW Corner The Alameda/Pershing Ave.	San Jose
19	Ryland Park - SW corner N. First St./Fox Ave.	San Jose
20	Lamplighter Trailer Park - SW of SR 237 and N. First St.	San Jose

RMS = Remote Monitoring Site, part of SJC's Aircraft Noise & Operations Monitoring System

TABLE 9

IMPACT OF CURFEW MODIFICATION ON CNEL VALUES

Reference Location	Master Plan Year 2010[a]	Master Plan Year 2010 + Proposed Modification	Change
1	70.3	70.4	+ 0.1
2	68.0	68.0	0
3	69.8	69.8	0
4	67.3	67.3	0
5	69.6	69.6	0
6	68.4	68.4	0
7	67.7	67.7	0
8	66.6	66.6	0
9	65.2	65.2	0
10	63.2	63.2	0
11	65.9	65.9	0
12	60.2	60.3	+ 0.1
13	67.1	67.1	0
14	61.8	61.8	0
15	63.5	63.5	0
16	59.1	59.1	0
17	61.3	61.3	0
18	55.7	55.7	0
19	59.0	59.1	+ 0.1
20	61.0	61.1	+ 0.1

[a]Includes all of the approved amendments to the Master Plan that are listed in Table 2.

Reference grid locations are listed in Table 8.

Source: Brown-Buntin Associates, 2003.

SECTION 5. CONCLUSION

The City of San Jose is considering a proposed modification to the Airport Curfew, the curfew being a noise mitigation measure that was adopted when the *Master Plan Update* was approved in 1997. The proposed modification is described in Section 3 of this Addendum. The City has evaluated the environmental effects of the proposed modification in Section 4 of this Addendum.

Based upon the factual information contained in the above analyses, the City has reached the following conclusion:

Approval of the proposed modification to the Airport Curfew described in Section 3 will not have any significant environmental impacts not previously disclosed in the Final EIR, nor will there be a substantial increase in the severity of previously-identified significant environmental impacts. Therefore, no subsequent or supplemental EIR is warranted or required.

SECTION 6. REPORT PREPARERS

John Hesler, Senior Environmental Specialist, David J. Powers & Associates, Inc.

Bob Brown, President/Airport Noise Specialist, Brown-Buntin Associates, Inc.

Alan Hedge, Vice President, The Campbell-Hill Aviation Group, Inc.

APPENDIX

A

LETTER

FROM FAA

DATED

OCTOBER 2, 2003

U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

OCT 2 2003

Mr. Ralph G.Tonseth
Director of Aviation
City of San Jose
1732 N. First Street, Suite 600
San Jose, CA 95112-4538

Dear Mr. Tonseth:

This letter is in response to letters of January 29, 2003, June 19, 2003, and August 13, 2003 from counsel for the City of San Jose ("City") to the Federal Aviation Administration (FAA) requesting the agency's views concerning the consistency of the City's proposed amendments to the curfew provisions in the 1984 San Jose International Airport ("SJC") Noise Control Program with applicable Federal law, including the City's grant assurances and the Airport Noise and Capacity Act of 1990 ("ANCA"), recodified at 49 U.S.C. §§47521-47533.

The City has accepted grants under the Airport Improvement Program (AIP), 49 U.S.C. § 47101 *et seq.*, and is obligated by the assurances in its grant agreements with the FAA. Obligations under the grant assurances include the obligation to provide access by air carriers on reasonable and not unjustly discriminatory terms. Airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990, are subject to the provisions of ANCA, and its implementing regulations at 14 C.F.R. Part 161.

As you know, representatives from the FAA and the City have met numerous times over the past year to discuss the City's proposed transition from a weight-based to a noise-based airport restriction at SJC. The FAA appreciates the City's promptness in responding to our requests for information, including the underlying noise analysis and supporting data.

We understand the City's proposal, summarized in the June 19, 2003, letter, to be as follows. The City's current noise control program, adopted in 1984, prohibits transport category aircraft (under the City's ordinance, those weighing more than 75,000 pounds based upon manufacturer-certificated maximum take-off weight) from operating between the hours of 11:30 P.M. and 6:30 A.M. The curfew permits Stage 3 non-transport category aircraft (under the City's ordinance, aircraft weighing less than 75,000 pounds) to operate during curfew hours. The ordinance has been legally challenged by aircraft operators and separately in an informal complaint filed by the Aircraft Owners and Pilots Association (AOPA) with the FAA.

We understand that while the City seeks to operate the airport in compliance with applicable federal requirements, it also wishes to preserve to the maximum extent possible the benefits of its extensive noise compatibility planning and community noise mitigation efforts. The City is proposing to restructure the curfew from a weight-based regulation to a regulation based directly on noise emissions. The City proposes to adopt a maximum average single-event noise level of 89 EPNdB for the amended noise-based regulation, based on FAA advisory circulars. This is the City's preferred noise standard because it would as closely as possible replicate the noise contours currently forecast for 2010.

Counsel for the City has also advised that the City is proposing to assess civil penalties in the amount of $2,500 for violations of the curfew. Civil penalties appear to be available in legal actions against intentional violators of the existing curfew under the provision of the California Business and Professions Code relating to unfair business practices. See, Letter dated November 4, 1999, from Bob Cohn, Shaw Pittman, to Barry Molar, Manager, FAA Airport Financial Assistance Division, Re: PFC Application No. 99-07-C-00-SJC, Exhibit 1A, Letter dated March 24, 1999 from Michael R. Groves, City Attorney to Harry C. Algar, Executive Vice President Operations, Delta Airlines, page 2.

As we understand it, eligibility for operations during the curfew hours under the replacement noise-based regulation would depend not upon the aircraft's Stage 2/Stage 3 designation or weight, but rather on the average of the three certification values for each type of aircraft based on published FAA noise certification data contained in FAA Advisory Circular 36-1H. Aircraft whose average noise level, calculated using certification values in the Advisory Circular, exceeds 89 EPNdB would be prohibited from operating during the curfew hours. Aircraft generating average noise levels of 89 EPNdB or less would be permitted to operate during the curfew hours.

The Airport Noise and Capacity Act (ANCA)

On November 5, 1990, the Congress enacted ANCA to establish a national program for review of airport noise and access restrictions. ANCA, as implemented by 14 C.F.R. Part 161, requires airport proprietors that propose to implement airport noise or access restrictions that affect the operation of Stage 2 aircraft to comply with specific notice, economic cost benefit analysis, and comment requirements. ANCA further requires that airport proprietors proposing to implement noise or access restrictions on Stage 3 aircraft operations provide a detailed economic cost benefit analysis, demonstrate satisfaction of six statutory criteria, and obtain FAA approval prior to implementation of any such restrictions, unless agreement is obtained from all affected aircraft operators.

When ANCA was passed, it permitted airports to implement Stage 2 restrictions that were proposed and Stage 3 restrictions that were in effect before its effective date. These airport noise and access restrictions are "grandfathered" under ANCA. In addition, certain restrictions are exempt from ANCA, including "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does

not reduce or limit aircraft operations or affect aircraft safety." 49 U.S.C. § 47524(d)(4); 14 C.F.R. § 161.7(b)(4).

Since the City had a mandatory, enforceable weight-based curfew in its airport noise control program prior to October 1, 1990, the original curfew at SJC is grandfathered under ANCA. Letter dated November 24, 1999, from Paul L. Galis, Acting Associate Administrator for Airports, FAA to Ralph G. Tonseth, Director of Aviation, City of San Jose. The City's proposal to amend its curfew to use noise emissions rather than weight as its basis and to allow all aircraft that are currently eligible to operate under the existing weight-based ordinance to continue to operate to the same extent is exempt from ANCA because it would not reduce or limit aircraft operations or affect aircraft safety.

The City represents that any aircraft currently permitted to operate under the weight-based regulation would be permitted to continue to operate under the noise-based regulation, either under the general rule or under a particular waivers or exemption provision in the ordinance. While some aircraft currently operating (*i.e.*, Stage 3 aircraft under 75,000 lb.) would not meet the 89 EPNdB average noise level requirements of the proposed ordinance, the City proposes to exempt those aircraft from the noise level requirement of the amended rule. Assuming the City continues to authorize the operation by aircraft currently permitted to operate during curfew hours, the proposed amendment would not result in any new restriction on use of the airport.

Turning to the proposal to specify civil penalties of $2,500 for curfew violations, the FAA determined that a proposal by the Port District of San Diego to increase existing civil penalties to secure compliance with airport noise and access restrictions did not trigger ANCA. According to the summary of the City's proposal in the June 19, 2003 letter and Counsel for the City, the City plans to include appropriate due process opportunities for aircraft operators to present information bearing upon the specific circumstances of any curfew violation and for administrative appeals from determinations of violation. In approving the City's application to impose and use passenger facility charges, the City documented and the FAA determined that the City has consistently sought compliance with, and enforced, the nighttime curfew, through remedies including court action.

Although there is no evidence that the City availed itself of the remedy of civil penalties in the past, such penalties appear to have been available against intentional violations of the curfew. Given the City's consistent history of enforcing the curfew, this proposal to specify civil penalties does not appear likely to have any greater operational impact than a proposal by an airport to increase its existing penalties. Neither type of change appears likely to reduce or limit aircraft operations or affect aircraft safety.

Accordingly, we find that the restructured ordinance would not reduce or limit aircraft operations within the meaning of 49 U.S.C. 47524(d)(4) and 14 C.F.R. 161.7(b)(4), and the City is not required to meet the requirements of ANCA and 14 C.F.R. Part 161 for a new airport access restriction.

The Airport Improvement Program Grant Assurances

Whether or not ANCA applies, the airport sponsor has a separate obligation under its AIP grant assurances not to impose the restriction if it is unreasonable or unjustly discriminatory.

As a sponsor of a Federally-obligated airport, the City of San Jose is required under 49 U.S.C. § 47107(a) and related Grant Assurance 22 to make SJC available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities. The FAA uses a three-part test to determine the reasonableness of a proposed new access restriction under the AIP grant assurances, based on the provisions of 14 C.F.R Part 150 and implementing guidance. The FAA reviews a proposed restriction to determine if it addresses an actual noise problem; if the proposed noise restriction is reasonably effective in addressing that problem; and if the airport sponsor has used an approach to the problem that fairly balances the local and national interests. We applied this test to the City's proposal, but took into account the common sense realities of a situation where an existing restriction must be revised to assure compliance with applicable federal and state laws.

The 89 EPNdB Limit. First, the FAA does not question that the weight based restriction, which is grandfathered under ANCA, addresses a significant noise problem at San Jose. The City's Part 150 noise exposure map update indicates that approximately 8,000 residents are exposed to noise at or above CNEL 65 dB, the federally designated threshold for incompatible residential land uses. Without the curfew ordinance, that number could be considerably higher. The proposed emission-based curfew addresses the same problem and achieves the same mitigation benefits as the existing ordinance. The City must preserve substantially comparable noise mitigation benefits because under California law, airports like SJC that have CNEL 65 dB noise contours over incompatible land uses must diligently pursue reasonable noise mitigation measures to the greatest extent reasonably possible and obtain variances from the State to continue operating. California Code of Regulations, Title 21, §§5012, 5050, 5053.

On the second point, the noise curfew measures adopted by the City under the existing ordinance, and the measures proposed in the new ordinance, both achieve the limitation of noise impact to a specifically defined area near the airport and are necessary to achieve that goal. The proposed new ordinance substantially replicates the noise benefits afforded under the existing rule. The proposed ordinance does draw a line, and operators with aircraft emitting noise just above that line will be excluded from curfew hour operations. In this case, the reasonableness of that line depends on whether it is no more restrictive than necessary to achieve the same noise mitigation obtained by the current noise curfew. We have concluded that it is no more restrictive than necessary.

The FAA's Integrated Noise Model (INM) predicts the areas and numbers of residents subject to cumulative aircraft noise impact at an airport. INM results under the proposed ordinance were compared with the airport's current Part 150 noise exposure map contours. That comparison indicated that the selected noise emission limit of 89 dB

produces a CNEL 65 dB contour in 2010 very close to the 2010 CNEL 65 dB contour under the existing ordinance.

Finally, the City used an approach in its transition from its current noise curfew ordinance to a proposed replacement ordinance that fairly balances local and national interests. The City implemented appropriate non-restrictive land use measures under 14 C.F.R. Part 150 as part of its efforts to mitigate noise and has continued to update its noise exposure maps and mitigation plans on a regular basis. For example, the City has purchased land and avigation easements for noise mitigation purposes and implemented FAA-approved noise abatement procedures. Moreover, real estate disclosure is in effect within the CNEL 65 dB in accordance with California law. Additionally, the City has actively used its own resources to mitigate impacts, including the Acoustical Treatment (ACT) Program, a program to install noise insulation in more than 1,400 homes in the communities near the airport. The City's approach preserves the long-standing mitigation of significant nighttime noise for the community, substitutes a noise-based standard to control nighttime noise for a weight-based standard in a nighttime curfew that otherwise is grandfathered by Congress in ANCA, and provides slightly greater airport access during the curfew hours by allowing additional operators and grandfathering existing operators.

As noted above, the City of San Jose is constrained by state law to preserve the noise benefits of its airport noise control and mitigation program, including its existing curfew. However, the City is also constrained to address FAA's concerns that the lack of a relationship between aircraft weight and noise would render the curfew improper under federal grant requirements. In determining the reasonableness of a proposed amendment in these circumstances, the FAA does not require an airport to consider alternative restrictions by taking a "clean-slate" approach. Rather, under the test of reasonableness an airport may consider practical and feasible alternatives and has the discretion to structure the amendment to its existing restriction in a manner that preserves the grandfathered status of its restriction under ANCA. An airport may, but is not required to propose a more stringent restriction that would trigger a lengthy process of notice, comment, analysis, and approval by the FAA.

For the above reasons, the FAA considers the 89 EPNdb limit to be reasonable and not unjustly discriminatory.

Exemptions For Certain Operators. Given that the FAA accepts the validity of the 89 dB limit to preserve and continue the City's longstanding noise mitigation goals, the remaining issues of reasonableness and discrimination relate to the City's proposal to exempt certain operators from that requirement. The City proposes to permit aircraft currently allowed to operate during curfew hours to continue to operate under the amended curfew, even if those aircraft do not meet the 89 dB limit. These aircraft are all Stage 3 aircraft under 75,000 lb. The number of operations by these aircraft is not large; in a recent 12-month period, the City counted about 150 curfew operations by the aircraft types that would be exempted under the amended curfew. Even though the number of operations by the "grandfathered" aircraft types is small, the issue of reasonableness and

discrimination could be raised by the operator of an aircraft that exceeds the 89 dB limit but is quieter than one or more of the "grandfathered" aircraft types.

In this case, we find that any discriminatory effect is a result of San Jose's effort to modify a grandfathered restriction to comply with its grant assurance obligations without either increasing the level of significant community noise by setting a higher noise limit or diminishing the level of airport access provided in the grandfathered restriction by eliminating currently permitted operators, and would thus be justified in these circumstances. For these same reasons, the proposal to exempt existing operators is reasonable.

In this case a requirement that the City eliminate all discriminatory effects in a new curfew would present the City with a Hobson's choice: either propose and apply for FAA approval to implement a more stringent curfew that would eliminate 150 general aviation operations a year, or increase the curfew noise limit from 89 EPNdB to the highest level of any currently operating aircraft, which would significantly expand the number of residents exposed to noise above CNEL 65 dB (and potentially violate state law). The City cannot retain its current ordinance. It must make one of the above choices, or exempt some current Stage 3 operators as it proposes to do.

Accordingly, we find that the City's proposal to grandfather the Stage 3 general aviation operations permitted under the current rule is reasonable and is not unjustly discriminatory toward other operators.

Conclusion

For the above reasons, the FAA finds that the proposal by the City of San Jose to restructure the City's curfew from a weight-based to a noise-emission-based curfew, as summarized in the June 19, 2003, letter and revised according to Counsel for the City, would not trigger the requirements of ANCA. We further find that it is reasonable and not unjustly discriminatory, within the meaning of Grant Assurance No. 22, for the City to adopt an alternate noise mitigation rule that achieves the same noise mitigation benefits as the rule replaced.

We are satisfied, based on available information and the results of the forecast noise modeling conducted by the City that the single-event noise limit proposed for adoption by the City would achieve a level of noise mitigation substantially identical to the existing rule. Finally, under the circumstances of the City's transition from a weight-based rule to a rule based directly on noise emissions, we find that the exemption from the restructured curfew of aircraft currently allowed to operate during curfew hours would not unjustly discriminate against other operators. While the FAA makes no representation about and does not reach issues that may arise from the implementation of the amended restriction and its application to individual cases, the agency finds that the City's plan to restructure the curfew from a weight-based regulation to a noise-based curfew does not present a current issue of noncompliance under ANCA or the City's grant assurances.

This opinion is based on the particular circumstances at San Jose International Airport, including the facts that the community surrounding the airport has several thousand residents exposed to noise at a significant level; that the City has a longstanding noise ordinance that has been considered the status quo in master planning and in state environmental reviews; that the City is actively moving to adopt a revised noise ordinance to replace a problematical weight based rule to be consistent with applicable Federal law; and that no operators currently permitted to use the airport during curfew hours will be adversely affected by the proposed amended rule. The findings and opinions in this letter should not be taken as general policy on airport access that would apply to any other airport access rules or proposed rules, even if similar to the ordinance in effect at San Jose.

As you know, AOPA filed an informal complaint on January 31, 2000, and a follow-up letter of March 27, 2000, alleging that the City's weight-based curfew is unlawful because it unjustly discriminates against certain aircraft based solely upon their weight. The City responded on March 1, 2000, asserting that AOPA's position was without merit and misinterpreted the law. Pending City action on the proposed ordinance, the FAA will address AOPA's allegations in a separate letter to AOPA.

This is not a final appealable order of the Administrator within the meaning of 49 U.S.C. §46110.

The FAA looks forward to continue working with the City of San Jose. Again, I appreciate the considerable time and effort that representatives of the City have spent in meeting with representatives of the FAA and responding to our questions.

Sincerely,

J. R. White for

David L. Bennett
Director, Airport Safety
and Standards