



March 11, 2020

City of San José, Department of Planning, Building, and Code Enforcement
Attn: David Keyon, Environmental Project Planner
200 East Santa Clara Street, 3rd Floor Tower
San José CA 95113-1905

Re: First Amendment to the Draft Environmental Impact Report for the Amendment to the Norman Y. Mineta San José International Airport Master Plan (PP 18-103)

Dear Mr. Keyon:

The City of Santa Clara has reviewed the First Amendment to the Draft Environmental Impact Report (First Amendment) prepared for the Norman Y. Mineta San José International Airport Master Plan Amendment, including responses to Draft EIR (DEIR) comments, and offers the following additional comments:

Greenhouse Gas Emissions

The First Amendment states that “the Airport agrees to commit to achieving Level 3+ Neutrality, or equivalent, as implementation of the amended Airport Master Plan proceeds” and revised Mitigation Measure GHG-1.1 accordingly. The City of Santa Clara appreciates that the City of San José has committed to Level 3+ Neutrality or its equivalent. However, the City of Santa Clara notes Mitigation Measure GHG-1.1 no longer includes a requirement to publish an annual carbon footprint report, but a biennial report. Given that the first level of Airport Carbon Accreditation requires an annual carbon footprint report, and each subsequent accreditation level incorporates the prior levels’ requirements, the City of Santa Clara respectfully requests that Mitigation Measure GHG-1.1 be revised to include an annual reporting requirement as required by Airport Carbon Accreditation.

Hazards and Hazardous Materials

The City of Santa Clara requests additional clarification regarding who is responsible for the existing fuel storage and will be responsible for the additional fuel storage tanks proposed under the Master Plan Amendment. The DEIR refers to the “Airport’s fuel storage facility” in saying capacity will be increased from 2,000,000 gallons to 4,000,000 gallons. (DEIR, p. 219.) However, the First Amendment states that the existing fuel storage is operated by Swissport and indicates Swissport is responsible for the applicable Spill Prevention Control & Countermeasure (SPCC) Plan. It further states the Airport’s SPCC Plan “is for Airport/City-owned above-ground storage tanks only” in explaining why the Airport’s current SPCC Plan does not encompass the existing 2,000,000 gallons. (First Amendment, p. 28 (emphasis added).) Because it does not appear the existing fuel storage facility is owned by Swissport—or that the anticipated additional 2,000,000 gallon storage capacity will be owned by Swissport—please clarify whether the storage facilities are owned by the Airport/City of San José. If so, please also clarify whether independent *operation*

of Airport/City-owned facilities absolves the Airport/City of San José from preparing a SPCC Plan for those facilities.

Noise

The City of Santa Clara again retained Wilson Ihrig to review the First Amendment, and their analysis is attached to this letter. We note that the San Jose failed to respond individually to the issues raised in the Wilson Ihrig letter submitted on the DEIR, and as such, several issues raised in that letter were not adequately addressed in the First Amendment. Wilson Ihrig's second letter, attached hereto, identifies the following issues remain, as expanded upon or summarized below:

Nighttime Noise

Wilson Ihrig explains that the DEIR fails to assess the potential for nighttime take-offs to disrupt sleep or awaken people living under the flight paths near the airport and finds that the DEIR needs to be revised to include analysis of these impacts arising from individual and multiple single-event take-offs. Wilson Ihrig notes that the calculations necessary to undertake the analysis will be fairly straightforward given the insulation characteristics of many Santa Clara residences are known as they were insulated through the Acoustical Treatment (ACT) Program.

The City of Santa Clara respectfully requests analysis of single-event noise during nighttime operations and analysis of the potential for sleep disturbance in order to provide a meaningful noise analysis as discussed in the Wilson Ihrig letter. Well over half the commenters on the DEIR expressed concern about noise, including concerns relating to nighttime noise levels interfering with sleep.

The First Amendment claims that the DEIR adequately accounted for nighttime operations because the CNEL metric is time-weighted. (First Amendment, p. 28.) The First Amendment fails to recognize that this argument was rejected in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344. As cited in the first letter submitted by Wilson Ihrig, *Keep Jets* is instructive because it pertained to a project involving the Metropolitan Oakland International Airport, in an urban setting and near many residential communities, like the Project here. The petitioners in *Keep Jets* raised concerns that the EIR failed to analyze the project's potential interference with sleep, including physiological response and annoyance from increased nighttime overflights. There, the lead agency relied on CNEL thresholds of significance as used by the FAA in NEPA review and, like the City of San José here, defended CNEL as adequate to account for nighttime disturbance.

The court found that this approach failed to satisfy CEQA for numerous reasons. First, it noted that CEQA reflects Legislative policy to "take all action necessary to provide the people of this state with . . . freedom from excessive noise" and that CEQA mandates consideration of "qualitative factors as well as economic and technical factors." (*Keep Jets, supra*, 91 Cal.App. 4th at pp. 1379-1380 (emphasis original), citing Pub. Resources Code § 21001(b) & (g).) "Thus, through CEQA, the public has a statutorily protected interest in quieter noise environments." (*Ibid.*) The court further explained that "the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting

a threshold of significance under CEQA.” (*Id.* at p. 1381.) As evidence, the court noted the State Airport Land Use Planning Handbook (Airport Handbook) “specifically addresses the shortcoming of exclusive reliance on the CNEL metric for assessing changes in aircraft-related noise levels in quieter environments.” (*Ibid.*) Thus, the court found that CEQA required the EIR to provide meaningful analysis of changes in noise levels due to increased nighttime flights and the impact on the community, including sleep disturbance. (*Id.* at pp. 1381-1382.)

Similarly, here, the EIR fails to comply with CEQA by omitting analysis of the impact of additional nighttime flights on sleep disturbance. As noted in *Keep Jets*, CEQA provides for qualitative measures of impacts in addition to quantitative, technical analysis where the CNEL metric fails to address the public’s substantial concern over noise impacts, including nighttime noise and sleep disturbance. Further, land use compatibility does not preclude the potential for an impact under CEQA, which requires separate analysis. *Keep Jets* relied on the Airport Handbook in finding quantitative noise metrics to be inadequate in measuring noise impacts such as noise impacts over residential areas as night. The current 2011 edition of the Airport Handbook¹ notes “aircraft noise exposure in areas beyond the outermost CNEL contours can also be annoying to some people and *may be regarded as locally significant.*” (Airport Handbook, p. 2-4 (emphasis added).) It further states: “*For quieter settings and many—if not most—airports in California, 65 dB CNEL is too high of a noise level to be appropriate as a standard for land use compatibility planning.*” (*Id.* pp. 4-3–4-4 (emphasis original).) Therefore, the Airport Handbook continues to reflect the shortcoming in relying on the CNEL metric for quieter settings, which would include nighttime conditions. The EIR here must include analysis of single noise events and their potential for sleep disturbance. The City of Santa Clara respectfully requests this analysis be undertaken before final approval, and if the analysis determines there will be significant impacts with respect to single nighttime noise events, the EIR must be recirculated.

Reliance on Relative CNEL Increase Threshold of Significance

The First Amendment defended the decision to use a relative threshold of significance (CNEL), claiming that it is not possible to foresee the potential future development beyond 2037. (First Amendment, p. 29.) Wilson Ihrig clarifies that it was not seeking speculative analysis of future development, but was making the point that reliance on a relative threshold theoretically permits unlimited increases in the permitted noise level of a given area over time. Wilson Ihrig also explains that consideration of noise levels past 2037 is not necessary to establish an absolute noise threshold to protect against health effects associated with noise exposure. Wilson Ihrig points to the example of the City of Newport Beach, which considers *any* increase over 75 CNEL a significant impact.

Wilson Ihrig also clarifies that the homes treated by the ACT Program are not compatible with any and all potential future noise levels. Though these homes are considered compatible with the Project, cumulative impacts from future projects may result in noise levels for which the ACT Program insulation provides inadequate mitigation.

¹ California Department of Transportation, Division of Aeronautics, California Airport Land Use Planning Handbook (2011), available at <https://dot.ca.gov/-/media/dot-media/programs/aeronautics/documents/californiaairportlanduseplanninghandbook-all1y.pdf>.

In light of the above, the City of Santa Clara continues to request consideration of an absolute threshold, as discussed by Wilson Ihrig.

Transportation

The City of Santa Clara understands the City of San José no longer views congestion as a CEQA impact and vehicles miles travelled (VMT) is now the adopted CEQA metric to measure transportation environmental impacts per City Council Policy 5-1. However, both the City of San José's Transportation Analysis Handbook and Valley Transportation Authority's (VTA's) Congestion Management Plan (CMP) Guidelines require study of CMP covered facilities and addressing impacts to covered facilities. The Transportation Impact Analysis (TIA) must identify the improvements for which the project is responsible. Additionally, if a project causes an impact that cannot be improved to the CMP Auto LOS standard, a Multimodal Improvement Plan (MIP) must be prepared in addition to the TIA.

Traffic Study Scope of Intersection Analysis

Thank you for providing the LOS analysis for Lafayette/Central and Lafayette/El Camino intersections. The First Amendment shows that the Project will exacerbate existing unacceptable operations at the intersection of Lafayette/Central Expressway under Background Conditions with Project and Cumulative Conditions with Project. In addition, it appears that the Lafayette/Central intersection will still operate unacceptably at LOS F in the Cumulative Condition even with improvements proposed by the City of San Jose. The First Amendment fails to clarify what improvements will be implemented or if the improvement involves payment of the Project's fair share contribution to specific improvements. The Final EIR must clarify what improvements are intended and explain what additional improvements will be implemented if the planned improvements are not adequate, which it appears they are not with respect to intersection operations that continue to operate at LOS F, even with improvements.

Cumulative Condition

The cumulative conditions for this project should include full build-out of City Place, along with any applicable mitigation measures for which the City Place project is 100% responsible. The First Amendment did not clarify whether cumulative conditions for the Project include full build-out of City Place. Please confirm or clarify whether full build-out of City Place is included in the Project's cumulative conditions analysis.

Intersection Improvements

Thank you for providing the LOS analysis for the De La Cruz and Central Expressway intersection. While the First Amendment reflects the Project would exceed the CMP's LOS criterion, it fails to provide improvement for this impact, claiming any additional improvements to the intersection would be infeasible. (First Amendment, p. 32.) A MIP is required when a CMP facility cannot be mitigated to the CMP LOS standard and thus the City of San Jose should develop a MIP for this intersection.

Measures to address intersection of Coleman Avenue and Brokaw Road

With respect to the Coleman Avenue and Brokaw Road intersection, the First Amendment states that “modifications to the signal phasing would not be required” (First Amendment, p. 33.) However, the Final EIR for the Gateway Crossing project in Santa Clara included a mitigation measure requiring a signal phasing change from *protective* phasing to *split* phasing along Brokaw Avenue at the Coleman Avenue and Brokaw Road intersection. Therefore, to ensure consistency between these two planning documents, the Final EIR for this Project likewise needs to include a improvement requiring split phasing along Brokaw Road be implemented at this intersection.

Also, the First Amendment recognizes “there are various improvements that are needed along the Coleman Avenue/De La Cruz Boulevard corridor to support planned future development, both in San José and Santa Clara.” (First Amendment, p. 33.) While the First Amendment states the City of San José will work with the City of Santa Clara, it does not specify that the City of San José will pay its fair share of improvements required in the City of Santa Clara as a result of the Project. Approval of the Project should not occur until conditioned to require payment of fair share fees for impacts to the Coleman Avenue/De La Cruz Boulevard corridor.

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Thank you for your consideration of and attention to the City of Santa Clara’s comments on the First Amendment for the Airport Master Plan Amendment.

Sincerely,



Andrew Crabtree
Director of Community Development

cc: Brian Doyle, City Attorney, City of Santa Clara
Deanna Santana, City Manager, City of Santa Clara
Manuel Pineda, Assistant City Manager, City of Santa Clara