



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY
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MINUTES OF REGULAR MEETING

August 17, 2023

- PLACE:** John Wayne Airport Administration Building
Airport Commission Hearing Room
3160 Airway Avenue
Costa Mesa, California 92626
- TIME:** Regular Meeting called to order at 4:00 p.m. by Chairman
Bresnahan
- COMMISSIONERS PRESENT:** Gerald Bresnahan, Stephen Beverburg, Alan Murphy,
Schelly Sustarsic
Alternates Present: Patricia Campbell
- COMMISSIONERS ABSENT:** Mark Monin
- STAFF PRESENT:** Lea U. Choum, Executive Officer
Jeff Stock, County Counsel
Julie Fitch, Staff Planner
Catherine Bennett, Recording Secretary
- PLEDGE:** Chairman Bresnahan led all present in the Pledge of
Allegiance

Executive Officer Lea Choum announced that this would be Catherine Bennett's last meeting as Recording Secretary as she has accepted a promotional opportunity in the Environmental Division of John Wayne Airport. She also mentioned that a comment letter from Jim Mosher regarding minutes and other items on the agenda has been distributed.

APPROVAL OF MINUTES:

Commissioner Sustarsic motioned to approve the July 20, 2023 minutes with Mr. Mosher's comments. Commissioner Murphy seconded the motion. The Commission voted 4-0 to approve the July meeting minutes with Mr. Mosher's corrections.

NEW BUSINESS:

1. City of Newport Beach: Housing Element Implementation/Noise Related Amendments:

Staff Planner Julie Fitch presented the staff report and stated that the City of Newport Beach indicated that the tentative August 22nd public hearing may be postponed. She introduced Jim Campbell, the City of Newport Beach Deputy Community Development Director, and JWA's CEQA consultant Kathleen Brady. Ms. Brady has worked on JWA EIRs including the subject EIR 617.

Mr. Campbell stated that the City appreciates the process, but that the City is burdened with a state mandate to plan for over 4,800 residential units and that the City is forced to look at sites near John Wayne Airport. He indicated that the sites that are wholly within the proposed 65 dB CNEL would only be used for housing if they were necessary to meet the RHNA mandate. He stated that these amendments do not approve any housing projects, and this is part of a larger series of amendments. The Land Use Element will need to be modified to reflect these housing sites and would require a vote of electorate.

Commissioner Murphy commented that when the Housing Element changes were previously proposed to the Commission, that the City mentioned that it was only the first of a series of changes. In addition, Commissioner Murphy stated that since the City does not own or operate an airport, the City does not have the authority to choose the noise contours.

Mr. Campbell stated that the City is doing an EIR for the changes and that the City cannot change the AELUP and does not intend to, but rather the City is proposing to change the contours in their own Noise Element based on the 2014 contours that the County adopted.

Commissioner Murphy clarified that the contours at the Airport change daily and that, for planning purposes you must look at the longer term.

Commissioner Beverburg suggested that two different sets of contours would generate conflicting governmental requirements.

Mr. Campbell stated that the City has the ability to override this decision if it is found to be inconsistent, and that the City has the authority to establish its own regulations and land use policies.

Commissioner Sustarsic asked if all the Housing Opportunity sites identified have the goal of allowing them to turn into residential development. Mr. Campbell answered, yes, and that presently the City is working on an amendment to the Land Use Element. He stated that there would be a series of overlay amendments within the Zoning Ordinance which would then implement those policies, and those amendments by statute must come before this body for consistency review with the AELUP.

Newport Beach resident Mike Smith introduced himself and asked if the ALUC wants to keep the existing noise contours. Chairman Bresnahan stated that that was correct.

Mr. Smith stated that he opposes the City's position and that he has talked to neighbors that also oppose the City's position.

Mr. Campbell mentioned that the City Council public hearing schedule for next week has been postponed to September 12th.

Mr. Beverburg asked if the City requires noise insulation in the 65 dB CNEL to keep the interior noise level below 45 dB. Mr. Campbell indicated yes.

Chairman Bresnahan wanted to clarify that Newport Beach will be increasing housing units inside the 60 dB CNEL and inside the 65 dB CNEL and relatively close to the 70 dB CNEL. Mr. Campbell concurred.

Mrs. Sue Dvorak from Newport Beach asked the Commission if the City's action would have any impact on the Spheres Agreement. Commissioner Murphy replied that the Commission is not a party to the Spheres Agreement. The parties for the Spheres Agreement, that was adopted in 2006, are the County and the City, so the ALUC is not able to take a position on that.

Mr. Jim Mosher stated that most of his comments pertain to the contours and are not completely relevant to the Agenda Item. He had questions about the EIR mitigation measures and the City's statement that housing would only be placed in the 65 dB CNEL if needed for the RHNA.

Commissioner Murphy asked if the City of Newport Beach was currently considered a Consistent agency. Ms. Choum replied yes and although ALUC found the City's Housing Element Update inconsistent, the City went through the proper overrule process. Commissioner Murphy asked at what point does the City become inconsistent if they continue to adopt several items which are inconsistent with the AELUP, and asked Mr. Stock if he could look deeper into it. He asked if there is a point where all the accumulated inconsistent findings, mean that the Commission can't find the City to be consistent anymore. Mr. Stock said he understood the question.

Commissioner Sustarsic stated that she looked at the section of the City's Amendment that Mr. Mosher was referring to on Page 2 of the Staff Report where it said "parcels bisected by the 65 dB CNEL noise contour could support future housing where parcels located wholly within the 65 dB CNEL noise contour would support housing only if necessary." She stated that anything that was within the 60 dB CNEL along with the 65 dB CNEL would be identified as okay for future housing.

Chairman Bresnahan asked Mr. Campbell for comment and Mr. Campbell stated that sites that are wholly within the 65 dB CNEL are deemed unacceptable unless they are necessary to meet the RHNA and then the City would have to make a specific finding for that. He stated that it is allowed in that area, only under those circumstances, and so the likelihood of needing those particular sites that are wholly within the new 65 dB CNEL contour is very unlikely. He added that if the site is bisected by the contour, then the entire site would be eligible for housing.

Mr. Campbell stated that under certain provisions of state law that are in affect right now, certain State projects can be converted to residential despite anything that is in the Airport Land Use Plan or the City's documents. There are some prevailing wage requirements stipulations that the State put into this but they basically have overridden even the Cities and the Counties in terms of where housing can go and if a developer can meet those tests under State Law, referring to SB 9 and AB 2011, which would become affective this month or actually July 1, housing can be put in almost any office area.

Chairman Bresnahan asked for a motion on the item. Commissioner Murphy motioned to support the ALUC staff's recommendation to find it inconsistent. Commissioner Beverburg seconded.

Chairman Bresnahan emphasized his strong opposition to the project and stated that one of the reasons this Commission exists is for its expertise in aviation, noise and planning to come together and give advice to the cities. The project would expose people to noise that they should not have to tolerate and be exposed to risks that they need to be aware of. Chairman Bresnahan stated that he thinks that this is a terrible idea and supports the staff recommendation.

The Commission voted 4-0 in favor of the staff recommendation to find the Newport Beach Housing Element Implementation/Noise-related amendments inconsistent with the AELUP for JWA.

2. **FAA Noise Policy Review**

Ms. Choum summarized the FAA's Noise Policy Review. The FAA originally requested comments through July 31, 2023, but that has been extended to September 29, 2023.

3. **Administrative Status Report**

Ms. Choum summarized correspondence since the last ALUC meeting in July.

4. **Status of Determinations of Inconsistency:**

Ms. Choum reported that the Los Alamitos City Council will be voting on their overrule of the ALUC's inconsistency determination on Monday, August 21, 2023.

5. **Items of Interest to the Commissioners:**

Commissioner Beverburg referred to the Agenda Item 1 discussion regarding the 60 dB CNEL and 65 dB CNEL, and that more questions have come up regarding the Commission's choice of the contours, where they come from, and what the Commission defines can happen in them. He recalled that the contours come from various documents and suggested that referring to those documents could be helpful in addition to AELUP.

Commissioner Beverburg commented that it's been a long time since the Commission has had a noise expert come in and he suggested that at a future meeting when the agenda is light, that a noise expert come in and address the Commission. He clarified that this is not because the City of Newport Beach would like to use different contours but because he would like to know where the contours come from. He also questioned how freeway noise

is separated from airport noise. Chairman Bresnahan said it could be added to a future meeting.

Chairman Bresnahan pointed out that the adopted contour lines are from a master plan, that at the time they were drawn, were looking forward 20 years and that the modeling utilized inputs such as aircraft type, types of loads and other variables to make predictions. The Commissioners then discussed new technology, jet engine noise, and how the contours are supposed to look 20 years into the future.

Chairman Bresnahan questioned how the Commission would move forward with reviewing projects that do not comply with the AELUP and then continue to override.

With respect to the Newport Beach project, Mr. Stock stated that rather than using this Commission's AELUP noise contour as the foundation for comparison, the City is choosing to utilize a different contour. The government code sections and PUC sections that deal with general plan amendments puts the onus on the local agencies to amend and comport with the AELUP and not the other way around. Mr. Stock said that the piecemeal approach should be expected. For example, maybe a Zoning Code Amendment will come next, and this Commission will be tasked with looking at whether the proposed Amendment would be consistent with the Commission's foundational document. Mr. Stock stated that it is not about finding a city as an inconsistent agency but whether the submittals to this Commission are consistent or inconsistent. If the local agency doesn't overrule or doesn't do it properly or fails to submit something that should have otherwise come before this Commission, then this Commission has the option of requiring the local agency to submit all land use actions and permits. But otherwise the totality of overrides doesn't make the city necessarily more inconsistent. The Commission must look at projects individually.

Commissioner Murphy stated that he agrees with everything Mr. Stock said but the challenge is that the term "consistent agency" is used in other documents and agreements. As an example, a question came up about the Spheres Agreement, in which the City is required to be a consistent agency. Commissioner Murphy asked, when does the City not become a consistent agency and become in violation of that agreement. Mr. Stock stated that there are different factors that dictate local agencies and government actions. For example, cities have come before the commission and stated that the housing allocations put upon them by the state are forcing noncompliance with an AELUP. At the same time, local agencies must also comply with this Commission, and its policies and procedures.

6. **Items of Interest to the Public:**

Mr. Smith asked if there is a mechanism in place that the City can be challenged when they override the Commission's recommendations.

Chairman Bresnahan explained the override process and the need for the City to make consistency findings on their project. If the City goes through the process and gets a 2/3 majority vote of their City Council, then they can override ALUC's inconsistency

determination. Mr. Stock provided additional detail on the process to address Mr. Smith's question as to whether the City can be challenged.

Mr. Mosher addressed the Commission. He stated that he appreciates all the comments the Commission has made but wanted to point out that the 2008 AELUP seems to be a bit out of date. He also pointed out that the AELUP references the 2002 California Airport Land Use Planning Handbook but that handbook was updated in 2011 so the references in the AELUP are out of date.

He referred to the Settlement Agreement and the capacity limit that it puts on the Airport through 2015. He explained there is a new Settlement Agreement, and we know what the capacity limit is now through 2030. We don't quite know what the capacity will be, but we seem to have a limit on it. He stated that those things should be updated so they are current. As to the contours, he appreciated the idea that the Commission does not want day to day contours but rather the Commission wants to look forward 20 years into the future, what the predictions are, but he feels they should be good predictions based on reality. Mr. Mosher also discussed in detail the current noise footprint of the airport and made comparisons to the 1985 contour. Overall he feels the AELUP for JWA needs a refresh.

Commissioner Sustarsic asked about the Metroplex and if the tightened the flight paths would change the contours. Commissioner Murphy responded that it could. There are a lot of moving pieces related to the contours such a fleet mix, aircraft technology, flight path changes, and more accurate navigation systems which could result in more concentrated traffic. All these factors would have an impact on the contours.

The next meeting is scheduled for September 21, 2023.

ADJOURNMENT:

There being no further business before the Commission, the meeting was adjourned at 5:19 p.m.

Respectfully submitted,



Lea U. Choum
Executive Officer