



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY
3160 Airway Avenue Costa Mesa, CA 92626 (949) 252-5170 Fax (949) 252-6012

AGENDA ITEM 3

January 18, 2024

TO: Commissioners/Alternates
FROM: Lea U. Choum, Executive Officer
SUBJECT: Administrative Status Report

The following attachments are for your review and information:

- ALUC 2024 Meeting Dates.
- JWA Statistics for September 2023 through November 2023.
- ALUC Letter to City of Los Alamitos regarding City vote on overrule.
- ALUC Letter to Santa Ana regarding Revised NOI to Overrule ALUC on Related Bristol
- JWA Letter to Newport Beach regarding Noise-Related Amendments.
- ALUC Letter to Newport Beach regarding NOI to Overrule Noise-Related Amendments.
- Caltrans Letter to Newport Beach regarding overrule of Noise-Related Amendments.
- ALUC Letter to Santa Ana regarding NOI to Overrule Related Bristol.
- Caltrans Letter to Santa Ana regarding NOI to Overrule Related Bristol.
- 1401 Quail Street Newport Beach Incomplete Letter.
- 1400 Bristol Street Newport Beach Incomplete Letter.
- 1401 Quail Street Newport Beach Referral Letter.
- 1400 Bristol Street Newport Beach Referral Letter.
- Buena Park Incomplete Submittal for Housing Element Related Amendments.

Respectfully submitted,

Lea U. Choum *for*
Executive Officer

2024 MEETING DATES
Airport Land Use Commission for Orange County

January 18, 2024

February 15, 2024

March 21, 2024

April 18, 2024

May 16, 2024

June 20, 2024

July 18, 2024

August 15, 2024

September 19, 2024

October 17, 2024

November 21, 2024

December 19, 2024

John Wayne Airport Posts September 2023 Statistics

November 1, 2023

(SANTA ANA, CA) – Airline passenger traffic at John Wayne Airport decreased in September 2023 as compared to September 2022. In September 2023, the Airport served 969,619 passengers, a decrease of 4.4% when compared with the September 2022 passenger traffic count of 1,014,460.

Commercial aircraft operations in September 2023 of 7,962 decreased 2.8% and commuter aircraft operations of 369 decreased 22.0% when comparing with September 2022 levels.

Total aircraft operations decreased in September 2023 as compared with the same month in 2022. In September 2023, there were 24,371 total aircraft operations (takeoffs and landings) a 7.0% decrease compared to 26,209 total aircraft operations in September 2022.

General aviation activity of 16,020 accounted for 65.7% of the total aircraft operations during September 2023 and decreased 8.5% compared with September 2022.

The top three airlines in September 2023 based on passenger count were Southwest Airlines (304,857), American Airlines (152,907) and United Airlines (152,857).

Monthly Airport Statistics - September 2023

	September 2023	September 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total passengers	969,619	1,014,460	-4.4%	8,894,764	8,322,806	6.9%
Enplaned passengers	478,015	498,822	-4.2%	4,417,957	4,135,900	6.8%
Deplaned passengers	491,604	515,638	-4.7%	4,476,807	4,186,906	6.9%
Total Aircraft Operations	24,371	26,209	-7.0%	202,746	232,046	-12.6%
General Aviation	16,020	17,513	-8.5%	127,193	156,581	-18.8%
Commercial	7,962	8,190	-2.8%	71,589	70,863	1.0%
Commuter ¹	369	473	-22.0%	3,791	4,257	-10.9%
Military	20	33	-39.4%	173	345	-49.9%
Air Cargo Tons ²	1,537	1,481	3.7%	13,030	13,156	-1.0%
International Statistics ³	(included in totals above)					
	September 2023	September 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total Passengers	28,682	29,316	-2.2%	284,239	221,662	28.2%
Enplaned passengers	14,680	14,824	-1.0%	142,838	110,551	29.2%
Deplaned passengers	14,002	14,492	-3.4%	141,401	111,111	27.3%
Total Aircraft Operations	226	239	-5.4%	2,202	2,098	5.0%

1. Aircraft used for regularly scheduled air service, configured with not more than seventy (70) seats, and operating at weights not more than ninety thousand (90,000) pounds.

2. All-Cargo Carriers: 1,460 tons
 Passenger Carriers (incidental belly cargo): 77 tons
 Current cargo tonnage figures in this report are for: August 2023

3. Includes all Canada and Mexico Commercial passengers and operations.

John Wayne Airport Posts October 2023 Statistics

November 28, 2023

(SANTA ANA, CA) – Airline passenger traffic at John Wayne Airport decreased in October 2023 as compared to October 2022. In October 2023, the Airport served 1,015,935 passengers, a decrease of 5.9% when compared with the October 2022 passenger traffic count of 1,079,792.

Commercial aircraft operations in October 2023 of 8,155 decreased 3.7% and commuter aircraft operations of 355 decreased 37.4% when comparing with October 2022 levels.

Total aircraft operations decreased in October 2023 as compared with the same month in 2022. In October 2023, there were 25,252 total aircraft operations (takeoffs and landings) a 2.9% decrease compared to 26,005 total aircraft operations in October 2022.

General aviation activity of 16,719 accounted for 66.2% of the total aircraft operations during October 2023 and decreased 1.2% compared with October 2022.

The top three airlines in October 2023 based on passenger count were Southwest Airlines (307,509), American Airlines (164,118) and Alaska Airlines (158,617).

John Wayne Airport
 Monthly Airport Statistics - October 2023

	October 2023	October 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total passengers	1,015,935	1,079,792	-5.9%	9,910,699	9,402,598	5.4%
Enplaned passengers	503,996	533,481	-5.5%	4,921,953	4,669,381	5.4%
Deplaned passengers	511,939	546,311	-6.3%	4,988,746	4,733,217	5.4%
Total Aircraft Operations	25,252	26,005	-2.9%	227,998	258,051	-11.6%
General Aviation	16,719	16,917	-1.2%	143,912	173,498	-17.1%
Commercial	8,155	8,466	-3.7%	79,744	79,329	0.5%
Commuter ¹	355	567	-37.4%	4,146	4,824	-14.1%
Military	23	55	-58.2%	196	400	-51.0%
Air Cargo Tons ²	1,465	1,461	0.3%	14,496	14,617	-0.8%
International Statistics ³	(included in totals above)					
	October 2023	October 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total Passengers	27,410	33,336	-17.8%	311,649	254,998	22.2%
Enplaned passengers	14,187	16,853	-15.8%	157,025	127,404	23.2%
Deplaned passengers	13,223	16,483	-19.8%	154,624	127,594	21.2%
Total Aircraft Operations	226	248	-8.9%	2,428	2,346	3.5%

1. Aircraft used for regularly scheduled air service, configured with not more than seventy (70) seats, and operating at weights not more than ninety thousand (90,000) pounds.

2. All-Cargo Carriers: 1,388 tons

Passenger Carriers (incidental belly cargo): 77 tons

Current cargo tonnage figures in this report are for: September 2023

3. Includes all Canada and Mexico Commercial passengers and operations.

John Wayne Airport Posts November 2023 Statistics

December 22, 2023

(SANTA ANA, CA) – Airline passenger traffic at John Wayne Airport decreased in November 2023 as compared to November 2022. In November 2023, the Airport served 954,228 passengers, a decrease of 5.9% when compared with the November 2022 passenger traffic count of 1,014,095.

Commercial aircraft operations in November 2023 of 7,763 decreased 5.7% and commuter aircraft operations of 334 decreased 36.0% when comparing with November 2022 levels.

Total aircraft operations decreased in November 2023 as compared with the same month in 2022. In November 2023, there were 22,839 total aircraft operations (takeoffs and landings) a 5.7% decrease compared to 24,215 total aircraft operations in November 2022.

General aviation activity of 14,726 accounted for 64.5% of the total aircraft operations during November 2023 and decreased 4.5% compared with November 2022.

The top three airlines in November 2023 based on passenger count were Southwest Airlines (287,012), United Airlines (149,707) and Alaska Airlines (148,983).

Monthly Airport Statistics - November 2023

	November 2023	November 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total passengers	954,228	1,014,095	-5.9%	10,864,927	10,416,693	4.3%
Enplaned passengers	472,016	502,437	-6.1%	5,393,969	5,171,818	4.3%
Deplaned passengers	482,212	511,658	-5.8%	5,470,958	5,244,875	4.3%
Total Aircraft Operations	22,839	24,215	-5.7%	250,837	282,266	-11.1%
General Aviation	14,726	15,418	-4.5%	158,638	188,916	-16.0%
Commercial	7,763	8,233	-5.7%	87,507	87,562	-0.1%
Commuter ¹	334	522	-36.0%	4,480	5,346	-16.2%
Military	16	42	-61.9%	212	442	-52.0%
Air Cargo Tons ²	1,554	1,342	15.8%	16,050	15,959	0.6%
International Statistics ³	(included in totals above)					
	November 2023	November 2022	% Change	Year-To- Date 2023	Year-To- Date 2022	% Change
Total Passengers	22,784	30,595	-25.5%	334,433	285,593	17.1%
Enplaned passengers	11,631	15,749	-26.1%	168,656	143,153	17.8%
Deplaned passengers	11,153	14,846	-24.9%	165,777	142,440	16.4%
Total Aircraft Operations	182	239	-23.8%	2,610	2,585	1.0%

1. Aircraft used for regularly scheduled air service, configured with not more than seventy (70) seats, and operating at weights not more than ninety thousand (90,000) pounds.

2. All-Cargo Carriers: 1,469 tons

 Passenger Carriers (incidental belly cargo): 85 tons

 Current cargo tonnage figures in this report are for: October 2023

3. Includes all Canada and Mexico Commercial passengers and operations.



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

September 26, 2023

Chet Simmons
City Manager, City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90702

Subject: Vote to Overrule the Airport Land Use Commission

Dear Mr. Simmons:

As you are aware, the City of Los Alamitos (City) submitted its 2021-2029 General Plan Amendment for its Housing Element Update to the Airport Land Use Commission for Orange County (ALUC) for a consistency review. On January 19, 2023, ALUC found the City's proposed Housing Element Update inconsistent with the Airport Environs Land Use Plan for Joint Forces Training Base Los Alamitos (AELUP) and the City was notified of ALUC's determination.

On February 21, 2023, the City took its first step toward overruling ALUC by adopting a notice of intent to overrule. The City provided notice to ALUC and Caltrans and both, in turn, provided advisory comments for the City to consider at its impending overrule hearing. At the same meeting, the City approved its General Plan Amendment.

On August 21, 2023, the City held its public hearing to overrule ALUC's January 19, 2023, inconsistency determination and voted 3-2 to overrule it. However, four affirmative votes were required, and thus, the City's overrule of ALUC's inconsistency determination failed. (Public Utilities Code (PUC) § 21676(b).)

The City's premature adoption of its General Plan amendment is void as a matter of law for failing to comply with PUC § 21676. If a local agency does not revise its general plan or overrule ALUC's inconsistency finding, it cannot enact its proposed general plan amendment. "Any local agency seeking to amend its general plan in a way that affects an area governed by an airport land use compatibility plan must first refer its proposed action to the responsible commission for a determination whether the proposed action is consistent with the airport land use plan. If the commission determines the amendment is not consistent, the agency may not enact it unless a two-thirds supermajority of the agency's governing body votes to override the commission's disapproval and the agency makes specific findings that its proposed action is consistent with the purposes of the

State Aeronautics Act.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 385; PUC § 21676(b).)

Due to the fact the City has not yet revised its general plan (and its recent overrule vote failed), ALUC may impose requirements on the City to submit subsequent actions, regulations, and permits to the commission for consistency review until its general plan is revised or the specific overrule findings are made. (PUC § 21676.5.)

At the ALUC meeting on September 21, 2023, ALUC considered imposing the aforementioned requirements on the City and ultimately voted to do so. Specifically, ALUC voted to adopt Option #2 of the ALUC’s Staff Report which specifically stated:

“As it pertains to the City’s General Plan Amendment, the ALUC finds that the City has not revised its general plan or overruled ALUC’s inconsistency finding by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4, Part 1, Division 9 of the Public Utilities Code as stated in Section 21670; therefore, pursuant to Public Utilities Code Section 21676.5 the ALUC requires that the City submit the following discretionary actions, related to the three sites listed below, to the ALUC for a consistency review with the AELUP for JFTB, Los Alamitos, until the City’s general plan is either revised and re-submitted to ALUC for review or the City makes the requisite overrule findings related to its general plan.

Site 6 located at 4655 Lampson Avenue

Site 7 Laurel Park APN 241-241-35

Site 10 located at 5030-5084 Katella

Discretionary actions that must be submitted: development agreements and amendments, administrative use permits, conditional use permits, site development permits, tentative and vesting parcel and tract maps, variances, and zoning consistency reviews. The submittal of the above discretionary actions does not excuse the City from continuing to separately submit all general plan amendments, specific plan amendments, zoning ordinance/map amendments to ALUC pursuant to the Public Utilities Code.”

Should ALUC find any of those submitted actions, regulations, and/or permits inconsistent with the AELUP, the City would then need to go through the same steps as it would need to go through to overrule an inconsistency finding on a general plan. (PUC § 21676.5(a).) If the City eventually revises its general plan and submits it to ALUC, or properly overrules the January 19, 2023, inconsistency finding, then the City’s above-listed actions, regulations and permits would no longer need to be reviewed by ALUC unless the City and ALUC agree that they should be, or the City voluntarily submits them to ALUC. (PUC § 21676.5(b).)

Please let us know if the City plans to revise its general plan (or will consider another overrule) and the timeline for doing so. As always, ALUC will continue to assist the City to ensure compatible land uses exist in the vicinity of the Joint Forces Training Base at Los Alamitos and will continue to coordinate planning activities to provide for the orderly development of air transportation while simultaneously protecting public health, safety, and welfare. In the meantime, we look forward to reviewing the City's discretionary land use actions as noted above.

Due to the public interest regarding this item, an ALUC Fact Sheet is attached. Should any questions arise, please contact Lea Choum, Executive Officer at (949) 252-5170 or at alucinfo@ocair.com.

Sincerely,

DocuSigned by:

0D8FA23FFFB2438

Mark Monin
Vice Chairman, ALUC

Attachment: ALUC Fact Sheet

cc: City Council Members, City of Los Alamitos
Ron Noda, Development Services Director, City of Los Alamitos
Jonathon Huff, Caltrans/Division of Aeronautics
Melinda Coy, Housing and Community Development
Jeffrey Stock, Deputy County Counsel, County of Orange



AIRPORT LAND USE COMMISSION (ALUC) FOR ORANGE COUNTY

The Airport Land Use Commission (ALUC) was established in accordance with California Public Utilities Code (PUC) sections 21670-21679.5 to assist local agencies in ensuring land uses in the vicinity of airports are compatible with the applicable Airport Environs Land Use Plans (AELUPs) and to coordinate planning at the state, regional, and local levels.

What does ALUC do?

The ALUC strives to protect the public from adverse effects of aircraft noise, ensure that people and facilities are not concentrated in areas susceptible to aircraft incidents, and to ensure that no structure or land use activities adversely affect the operational integrity of the airports or their navigable airspace.

How does the ALUC process work?

Any local agency proposing to amend its General Plan, Zoning Code, Specific Plans and or building regulations in areas within the airport planning areas must submit the proposed changes to ALUC. The ALUC reviews proposed projects for consistency with the applicable AELUP, and determines whether the proposal is consistent, consistent with conditions, or inconsistent.

What if a project is found inconsistent?

The local agency may resubmit a revised plan or project for additional ALUC review, or proceed with an overrule if it makes specific findings that the proposed action is consistent with the purposes of PUC section 21670. The local agency must approve the overrule with a 2/3 vote.

Note: If a local agency overrules an ALUC inconsistency finding, the operator of the airport shall be immune from liability for damages to property or personal injury caused by the public agency's decision to override the ALUC's action or recommendation.

What if a local agency fails to overrule ALUC?

If a local agency fails to overrule ALUC with a two-thirds vote, that agency's plan or project remains inconsistent with the AELUP and ALUC may require that the local agency submit all subsequent actions, regulations, and permits to ALUC for a consistency review until its general plan, zoning code and/or specific plan is revised, or the specific findings required by PUC sections 21670 and 21676 are made.

Who is on the Commission?

The ALUC consists of seven members. Two Commissioners are appointed by the Orange County Board of Supervisors, two are appointed by the League of California Cities Selection Committee and two are appointed by the public airports. The seventh member is appointed by the other Commissioners to represent the general public.

When and where do they meet?

ALUC meets at 4:00 pm on the third Thursday of each month at the Airport Commission Room of the John Wayne Airport Administrative Building, 3160 Airway Avenue, Costa Mesa, CA 92626.

Where can I find ALUC agendas and staff reports?

The monthly agendas and staff reports are publicly posted and also available on the ALUC website at:

<https://www.ocair.com/about/administration/airport-governance/commissions/airport-land-use-commission/>

How do I contact ALUC?

You may attend a meeting, email ALUC at alucinfo@ocair.com, or call (949) 252-5170.



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

September 27, 2023

Ali Pezeshkpour
Planning Manager, City of Santa Ana
P.O. Box 1988
Santa Ana, California 92702
APezeshkpour@santa-ana.org.

Sent by email.

Subject: Revised Notice of Intent to Overrule the Airport Land Use Commission

Dear Mr. Pezeshkpour:

In your original letter dated August 31, 2023, to the Airport Land Use Commission (ALUC) you provided notice that the City of Santa Ana (City) intends to overrule the ALUC's July 20, 2023, determination of inconsistency for the Related Bristol Specific Plan amendment. However, as part of that notice the City's proposed decision and findings were not included, in accordance with PUC Section 21676(b). Since your August 31 letter did not include the proposed decision and findings, the 45-day notification period had not started nor had ALUC's 30 days to provide advisory comments.

On September 25, 2023, the ALUC notified the City of the PUC requirements stated above. Subsequently, on September 26, 2023, ALUC received the City's Revised Notice of Intent to Overrule the ALUC which included the City's proposed supportive findings. Pursuant to PUC Section 21676(b) the 45-day notification period and 30-day advisory comment period began as of September 26, 2023. The ALUC intends to provide its advisory comments to you by October 26, 2023.

Thank you for submitting the revised NOI and draft findings. If you have any questions, please feel free to reach me at 949-252-5123 or lchoum@ocair.com.

Sincerely,

Lea Choum
Executive Director, ALUC

Attachment: City's Revised NOI to Overrule & Findings September 26, 2023

ecc: Minh Thai, Director of Planning & Building; mthai@santa-ana.org
Jonathan Huff, Caltrans/Division of Aeronautics; Jonathan.Huff@dot.ca.gov

MAYOR
Valerie Amezcua
MAYOR PRO TEM
Jessie Lopez
COUNCILMEMBERS
Phil Bacerra
Johnathan Ryan Hernandez
David Penaloza
Thai Viet Phan
Benjamin Vazquez



CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CITY CLERK
Jennifer L. Hall

CITY OF SANTA ANA

Planning and Building Agency

20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org/pba

August 31, 2023 – Revised September 26, 2023

Also sent via email to: LChoum@ocair.com

Lea U. Choum, Executive Officer
Orange County Airport Land Use Commission
3160 Airway Avenue
Costa Mesa, CA 92626

RE: REVISED NOTICE OF INTENT TO OVERRULE THE DETERMINATION OF INCONSISTENCY FOR THE RELATED BRISTOL SPECIFIC PLAN PROPOSED ON A 41-ACRE SITE LOCATED AT 3600 SOUTH BRISTOL STREET

The purpose of this letter is to inform you of the City of Santa Ana's intention to recommend that the Santa Ana City Council adopt the attached findings to overrule the July 20, 2023 Airport Land Use Commission's (ALUC) determination of inconsistency for Related Bristol Specific Plan ("Project") proposed on a 41-acre site located at 3600 South Bristol Street.

On August 29, 2023, the Santa Ana City Council met and (1) approved issuing a Notice of Intent to overrule and (2) determined to give notice to the ALUC of its decision to overrule as required by California Public Utilities Code (PUC) Section 21676(b). On August 31, 2023, the City issued its Notice of Intent to overrule, but subsequently received communication from ALUC staff that the notice did not reprint and contain therein the findings provided by the City in its June 30, 2023 submission to ALUC.

The City's June 30, 2023 submission to the ALUC for its July 20 consideration of the project included initial draft findings of consistency in sections 3 (draft Specific Plan) and 8 (Airport Land Use Compatibility Analysis). The City is attaching to this revised letter its draft consistency findings for the Project (Attachment A).

Pursuant to PUC Section 21676, the City hereby respectfully gives proper notice of its intention to overrule and submits the attached findings (attached hereto as Exhibit A) for review. PUC Section 21676(b) requires that a public agency making a decision to overrule shall give notice to the California Department of Transportation (Caltrans), Aeronautics Division, and ALUC at least 45 days prior to the final decision to overrule. After notification, the ALUC and Caltrans have 30 days from the receipt of notice to provide advisory comments to the City.

The City looks forward to receiving comments within the timeframes mandated by the PUC. At this time, the proposed Related Bristol Specific Plan has not been scheduled for public hearing for certification of its draft supplemental environmental impact report or its associated entitlement applications.

SANTA ANA CITY COUNCIL

Valerie Amezcua
Mayor
vamezcua@santa-ana.org

Jessie Lopez
Mayor Pro Tem, Ward 3
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David Penaloza
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dpenaloza@santa-ana.org

City of Santa Ana Notice of Intent to Overrule & Findings – Related Bristol Specific Plan
3600 South Bristol Street
September 26, 2023
Page 2 of 2

Should you have any questions regarding this notice and/or on the proposed project, please contact me by phone at (714) 647-5882 or by email at APezeshkpour@santa-ana.org. Thank you for your prompt attention on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ali Pezeshkpour', with a long horizontal flourish extending to the right.

Ali Pezeshkpour, AICP
Planning Manager

Attachment:

A: Draft Overrule Consistency Findings

- A. The City of Santa Ana is required to provide findings supporting the overrule of the Orange County ALUC determination as required in the California Public Utilities Code (PUC) Section 21676(b). Based on the following Findings of Fact and the associated substantial evidence in the public record, the proposed action by the City on the Related Bristol Specific Plan Project (Project) at 3600 South Bristol Street and related zoning change (amendment application) are consistent with the purposes of the State Aeronautics Act as stated in PUC Section 21670.
- B. The proposed Project provides for the orderly development of John Wayne Airport (JWA), and its surrounding area and promotes the overall goals and objectives of the State noise standards by avoiding new noise and safety problems, and protecting the public health, safety and welfare through the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards to the extent that this area is not already devoted to incompatible uses. This Project would not add any new residential or commercial noise impacts to the JWA 65 dBA Community Noise Equivalent Level (CNEL) noise area.
- C. It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to PUC Section 21669 and to prevent the creation of new noise and safety problems.
- D. To provide for the orderly development of JWA and the area surrounding the airport, the ALUC adopted the 2008 AELUP on April 17, 2008. The AELUP guides development proposals to provide for orderly development of the airport and the area surrounding the airport through implementation of the standards in Section 2.1 (aircraft noise, safety compatibility zones, building height restrictions).
- E. The ALUC is required to use the California Airport Land Use Planning Handbook (Handbook) that was updated by the California Department of Transportation, Division of Aeronautics (Caltrans) in 2011. The AELUP has not been updated to incorporate the Handbook nor has it updated information about the operation and environmental effects of JWA as reflected in its most recent Final Environmental Impact Report (EIR) certified by the Orange County Board of Supervisors on June 25, 2019 for the General Aviation Improvement Program (GAIP).
- F. As the Project proposes a zone change and adoption of a Specific Plan, and pursuant to PUC Section 21676, the City of Santa Ana referred the proposed Project to the ALUC for review.
- G. The ALUC has adopted FAR Part 77 as the criteria for determining height restrictions in Orange County. FAR Part 77 requires notification to FAA for any project that would be more than 200 feet in height above ground level or within

the imaginary surface of a 100:1 slope extending outward for 20,000 feet from the nearest runway. The Project site is located within the 206-foot-high imaginary surface area for JWA, thus requiring FAA notification. The proposed mixed-use buildings that are a part of the Project would be a maximum of 25 stories high, with the tallest point on the buildings being 285 feet above the existing ground level.

- H. On July 20, 2023, the City of Santa Ana presented the Project to the ALUC for a determination of consistency with the JWA AELUP. The ALUC staff report for that hearing recommended that the ALUC find the proposed Project consistent with AELUP issues of aircraft noise, flight tracks and safety, and heliports. The staff report noted that with regard to AELUP issues of height restrictions, the Project is inconsistent per Section 3.2.1 of the AELUP, which states that "within the boundaries of the AELUP, any land use may be found to be inconsistent with the AELUP which...permits structures of excessive height in areas which would affect adversely the continued operation of the airport; or permit activities or facilities that would affect adversely aeronautical operations." The proposed Project would allow buildings up to 25 stories and/or 285 feet, which would penetrate the FAR Part 77 Horizontal Obstruction Imaginary Surface for JWA.
- I. On July 20, 2023, the ALUC held a public hearing and, by unanimous vote, adopted a resolution finding the Project inconsistent with the AELUP for the stated reasons set forth in the staff report.
- J. The City of Santa Ana has the general police power to control land use within its territorial jurisdiction. (Cal. Const., art. XI 11, § 7). This constitutional authority is acknowledged in State law (PUC §§ 21676, 21676.5) and the ALUC process allowing for overrule of an ALUC finding of inconsistency.
- K. Pursuant to PUC Section 21676(b), the City may overrule the commission by a two-thirds vote of the City Council if it makes specific findings that the Project is consistent with the purposes of the State Aeronautics Act.
- L. The City finds that the Project is consistent with the AELUP and with the purposes of the State Aeronautics Act based on the following Findings of Fact and substantial evidence:
 - a. The ALUC lacks evidence of the Project's inconsistency with the AELUP. The proposed zone change under the Project allows establishment of a specific plan, which contains permissive uses and development standards, but does not specify exact locations and heights of each implementing development that falls within the scope of the specific plan.
 - b. During the July 20, 2023 ALUC hearing on the Project, City staff and the project applicant provided supplemental information about the nature of a specific plan, how implementing projects will be reviewed, information on

existing high-rises in the vicinity, FAA notification requirements for buildings exceeding 200 feet in height, and that the Final Supplemental Environmental Impact Report ("SEIR") for the Project would contain a mitigation measure requiring "Notice of Airport in Vicinity," to be included in all lease/rental agreements and post outdoor signage informing the public of the presence of operating aircraft, which demonstrates further compliance with the AELUP and to minimize potential future noise complaints. Despite this information, the ALUC voted to find the Project inconsistent per Section 3.2.1 of the AELUP.

c. **Noise.** The residential and commercial land uses under the proposed Project are consistent with the aircraft noise standards of the AELUP.

i. The Project is located outside of the JWA 60 to 65 dBA CNEL aircraft noise contours. Aircraft noise analysis was completed in the Project's SEIR (State Clearinghouse No. 2020029087) and presented at the ALUC hearing. The JWA GAIP EIR also contains noise analysis demonstrating that the Project is outside of the 60 dBA CNEL noise contour. This noise analysis is based on one year's worth of aircraft operations in all runway operating configurations with for both existing aircraft fleet mixes and future fleet forecasts. This analysis includes the time of day of all operations and includes noise penalties for evening (7 pm to 10 pm) and night (10 pm to 7 am) aircraft operations of five and ten decibels per operation. Residential land uses are normally consistent in areas impacted by aircraft noise up to 60 dBA CNEL and commercial land uses up to 65 dBA CNEL as shown in the AELUP Table 1. These are the same noise standards used by the FAA and the State of California to identify compatible land uses near airports.

ii. The Project is located outside of the JWA single-event aircraft noise contours. The detailed aircraft noise analysis completed as part of the JWA GAIP EIR included analysis of single event aircraft noise. This analysis included single event noise contours for the noisiest aircraft making regular use of JWA. The Project developer's consultant provided analysis and information at the ALUC hearing showing the Project site is located outside of the JWA 85 dB single event noise contours for all aircraft making regular use of the Airport.

iii. The Project includes required measure notifying future residents. The conditions of approval including notification measures, which includes required measure requiring "Notice of Airport in Vicinity," to be included in all lease/rental agreements and post outdoor signage informing the public of the presence of operating aircraft, which demonstrates further compliance with the AELUP and to

- minimize potential future noise complaints.
- i. The General Plan Update (GPU) in 2022 addresses noise, safety, hazards, and other related impacts from development in the vicinity of the Airport. Projects approved under the GPU would be required to comply with FAA airspace protection regulations using the AELUP consistency determination process.
 - ii. The AELUP establishes aircraft noise exposure exterior noise level compatibility thresholds for new development by land use category. According to the exterior noise thresholds outlined in the AELUP, multi-family residential development is considered normally consistent with exterior noise levels of less than 60 dBA CNEL, conditionally consistent with exterior noise levels between 60 and 65 dBA CNEL and normally inconsistent with exterior noise level above 65 Dba cnel. For commercial retail land use, exterior noise levels are considered normally consistent with exterior noise levels of less than 65 dBA CNEL and conditionally consistent with exterior noise level above 65 dBA CNEL. The Project site is located outside of both the airport's planned and actual 60 CNEL contours of JWA. Therefore, according to the AELUP, the Project residential, open space, and commercial retail land uses are normally consistent with JWA aircraft noise exposure exterior noise level compatibility standards. Also, the airport related noise at the Project site does not exceed the City's municipal code permissible noise levels. Additionally, the County's General Aviation Noise Ordinance prohibits commercial aircraft departures between the hours of 10:00 p.m. and 7:00 a.m. and arrivals between the hours of 11:00 p.m. and 7:00 a.m. These restrictions substantially limit the aircraft noise during the noise sensitive nighttime hours for residential use.
- d. **Safety.** The residential and commercial land uses under the proposed project are consistent with the safety standards of the AELUP. The Project is not in any of the AELUP safety zones. The Project is located outside of the airport's 60 CNEL contours. Table 1 of the Airport Environs Land Use Plan for JWA shows that residential land uses outside of the 60 CNEL contour are "normally consistent." The Project is located more than 0.29 miles from the outer edge of AELUP Zone 6, Traffic Pattern Zone as depicted in Appendix D. Further, AELUP Appendix D states the "Basic Compatibility Qualities" of Zone 6 as "Allow residential uses" and "Allow most nonresidential uses."
- i. Project is not in the JWA runway protection zones (RPZ). The Project is located nearly two miles from the outer edge of the nearest JWA RPZ.

- ii. The FAA's Determinations of No Hazard to Air Navigation for the Mixed-Use development structures are the only source of authoritative, aviation safety findings regarding the project. The FAA will conduct an aeronautical study (49 U.S.C. §44718 and 14 CFR Part 77) and issue its Determinations for individual implementing projects that exceed 200 feet in height and are submitted within the Specific Plan area.
- iii. In this case it is important to first establish what entity has authority over the use of airspace over the project site. "The United States Government has exclusive sovereignty of airspace of the United States" (49 U.S.C. § 40103(a)(1)).
- iv. In order to use this airspace, the FAA Administrator is responsible for: (1) Plans and policy for the safe use of the navigable airspace (49 U.S.C. § 40103(b)(1); and (2) "[R]egulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicle, and between aircraft and airborne objects" (49 U.S.C. § 40103(b)(2)).
- v. The FAA's aeronautical studies for project structures are the definitive standard for assessing compliance with federal aviation safety laws and regulations (49 U.S.C. § 77.1(c)). This federal authority is recognized in State law (Cal. PUC §21240).
- vi. The City of Santa Ana has the local police powers to control land use on the site (Cal. Const., art. XI 11, § 7). This constitutional authority is acknowledged in State law (PUC §21670 and §21676) and the ALUC process (AELUP §4.11) allowing for overrule of an ALUC finding of inconsistency.
- vii. The other entities that have processed or commented on this project have aviation safety duties and responsibilities related to this matter. Each of these entities relies on or ultimately defers to the FAA's authoritative aviation safety role in airspace determinations.
- viii. The AELUP for JWA, Section 2.1.3 Building Height Restrictions states, "In adopting criteria for building height restrictions in the vicinities of airports, the Commission considered only one standard and that was Federal Aviation Regulations Part 77 ([14 CFR] Part 77) entitled, *Objects Affecting Navigable Airspace*. "These regulations **are the only definitive standard available** [emphasis added] and the standard most generally used."

- ix. Section 2.1.3 also recognizes FAA aeronautical studies beyond 14 CFR Part 77 surfaces as the standard for review, "In addition to the 'imaginary surfaces,' the Commission will use all of the FAR Part 77.23 standards along with the results of FAA aeronautical studies, [emphasis added] or other studies deemed necessary by the Commission, in order to determine if a structure is an 'obstruction.'" This section goes on to state: The Commission considers and recognizes the FAA as the single "Authority" for analyzing project impact on airport or aeronautical operations, or navigational-aid siting, including interference with navigational- aids or published flight paths and procedures. The Commission also considers the FAA as the "Authority" for reporting the results of such studies and project analyses. The Commission will not consider the findings of reports or studies conducted by parties other than the FAA unless the FAA certifies and adopts such findings as true and correct.

- x. Section 2.1.3 adds reference to FAA Advisory Circular 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects Around Airports for Commission Review. This FAA Advisory Circular provides specific guidance for establishing zoning regulations along with specific guidance on a "variance" process for potential obstructions. At Section 3.b., "The Federal Aviation Administration (FAA) conducts aeronautical studies on obstructions which examine their effect on such factors as: aircraft operational capabilities; electronic and procedural requirements; and, airport hazard standards. ***If an aeronautical study shows that an obstruction, when evaluated against these factors, has no substantial adverse effect upon the safe and efficient use of navigable airspace, then the obstruction is considered not to be a hazard to air navigation*** [emphasis added]."

- xi. Caltrans Division of Aeronautics – Caltrans publishes the California Airport Land Use Planning Handbook ("Handbook") in accordance with State Law with the purpose to, " provide information to ALUCs, their staffs, airport proprietors, cities, counties, consultants, and the public; to identify the requirements and procedures for preparing effective compatibility planning documents; and define exemptions where applicable (Caltrans, 2011)." The Handbook provides specific guidance for assessing potential airspace obstructions in Section 4.5 Airspace Protection.

- xii. JWA – The FAA requires airport sponsors like Orange County to accept specific grant assurances when they accept federal funding. Hazard Removal and Mitigation and Compatible Land Use are two of these assurances (49 U.S.C. § 47107(a)(9) and (10)). For hazard

removal, the Airport relies on the FAA's aeronautical study to meet its requirement. For compatible land use, the Airport relies on coordination with the surrounding cities and the ALUC. The following are the specific assurances:

- xiii. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- The proposed Project would not result in hazards related to excessive glare, light, steam, smoke, dust, or electronic interference. Exterior lighting fixtures and security lighting would be installed in accordance with the City's Municipal Code Division 3, Building Security Regulations, which includes specifications for shielding and intensity of security lighting. In addition, the proposed Project would not use highly reflective surfaces, and does not include large areas of glass on the buildings. Therefore, the proposed Project would not generate substantial sources of glare.
 - Operation of the proposed residential and commercial uses would not generate substantial quantities of steam, smoke, or dust emissions. Dust emissions are regulated by SCAQMD requirements and construction related air quality emissions that could include steam, smoke, and dust emissions would be less than significant with implementation of the standard SCAQMD Rules.
 - The proposed Project would include the use of typical electronics, such as computers, televisions, and other electronics with wireless capability. These types of electronics are currently being used by the existing industrial land uses on the site, and other uses in the vicinity of the site. The new residential and commercial uses on the site would use similar technology that does not cause electronic interference that could affect aircraft. Thus, impacts related to electronic interference with operations of JWA would not occur.
- xiv. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use

of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the Project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

- e. **Height.** The residential and commercial land uses under the proposed Project are consistent with the height standards of the AELUP. The allowable height of structures surrounding an airport is described in FAR Part 77 as the allowable height at which safe movement of aircraft occurs. The regulation requires that notice be given to the FAA if there is a proposal to construct a structure that would exceed a 100:1 slope of an imaginary surface extending outward for 20,000 feet from the nearest runway at JWA. Beyond the 100:1 imaginary surface, FAR Part 77 requires notification to FAA for any project that will be more than 200 feet in height above the ground level.
- i. The proposed buildings associated with the Specific Plan would not exceed the sloping, three-dimensional 100:1 (one percent sloping surface from the nearest runway over 3,200 feet in actual length) FAA notification surface to require the Filing of FAA Form 7460-1. This information was provided by the Project applicant's representative during the ALUC hearing on the Project.
 - ii. The buildings exceeding 200 feet in height in the Specific Plan area will not exceed the sloping, three-dimensional 50:1 FAA precision instrument Approach Surface to JWA Runway 20R. This information was provided by the Project applicant's representative during the ALUC hearing on the Project.
 - iii. Each future site-specific implementing development under the Project will be required to be submitted through the City's development review process, at which point if a specific building is proposed within the Federal Aviation Administration (FAA) Notification Area that exceeds 200 feet in height, FAA notification compliance would be required through the development review process.
 - iv. In addition to requiring FAA notification for any buildings exceeding 200 feet in height within the Project area, AELUP and FAR Part 77 require an FAA aeronautical study to be conducted to ensure that the proposed structures would not constitute a hazard to air

navigation.

- f. **Overflight.** “Close to the JWA approach centerline” as identified by the ALUC is neither an FAA nor an AELUP standard.
 - i. The FAA is the only authoritative source of aviation safety data and the FAA does not have a “close to the JWA approach centerline” standard.
 - ii. The AELUP clearly identifies its airport land use planning standards around aircraft noise, safety, and height. Objective measures of these standards are clearly identified in AELUP Section 2.1. The Specific Plan is drafted to be consistent with each of these objective standards.
 - iii. Two-dimensional flight tracks and a list of unassociated aircraft do nothing to inform the impact of overflights. The ALUC provided limited arrival flight tracks, limited departure flight tracks and lists of aircraft by time of day and altitude that were purported to have produced these flight tracks. The limited nature of the information was commented on by ALUC commissioners during the July 20, 2023 hearing.
 - iv. Aircraft noise contours used to objectively measure noise impact already assume flight tracks and actual operating conditions for a full year including future operations. Limited information presented within the staff report packet dated July 20, 2023 of arrival flight tracks and limited information on departure flight tracks are not representative of a general condition and are not substantive evidence.
 - v. The project is located outside of the JWA single event noise exposure areas documented in the JWA General Aviation Improvement Program EIR certified on June 25, 2019. The project developer presented this information to the ALUC Commission at its hearing on July 20, 2023.
- g. **Heliports.** Heliports are not a part of the Project.
- h. **Zone Change.** The proposed zone change (amendment application) is consistent with the objective AELUP aircraft noise, safety and height standards and is therefore consistent with the larger planning role of the ALUC. “Close to the JWA approach centerline” is not an FAA or an ALUC standard.
 - i. ALUC offers no substantiation that overflights of new residents

would be disturbed or annoyed. On the contrary, the ALUC demonstrates that the Project is located outside of the 60 dBA CNEL noise contour. As such, the Project would not add any new residential or commercial noise impacts to the JWA 65 dBA Community Noise Equivalent Level (CNEL) noise area.

- ii. Flight tracks limited information for arrivals and departures, which was commented on by Commission members during the hearing, are not unique and are fully accounted for in the one year of overflights used to measure CNEL noise impacts associated with JWA.
- iii. Flight tracks limited information for arrivals and departures, which was commented on by Commission members during the hearing, are not unique and are fully accounted for in the single-event noise contours produced for the JWA GAIP EIR. The Project is located outside of these single-event noise contours.
- iv. Per Section 1.2 of the AELUP for JWA, the purpose of the AELUP is to safeguard the general welfare of the inhabitants within the vicinity of the airport and to ensure the continued operations of the airport. The method by which the ALUC achieves this purpose is through the application of the objective standards contained in Section 2.1 of the AELUP. As demonstrated in the ALUC staff report and, in these Findings, the Specific Plan and application for each implementing project is and will be consistent with each of the standards. As a result, the ALUC has met their duty under Section 1.2 by ensuring that the Specific Plan meets these standards.
- v. Additionally, Section 2.1.4 of the AELUP for JWA and PUC Section 21674 charge the Commission to coordinate at the local level to ensure compatible land use planning. The method by which the ALUC achieves this charge is through the application of the objective standards contained in Section 2.1 of the AELUP. As demonstrated in the ALUC staff report and, in these Findings, the Project is consistent with each of the standards. As a result, the ALUC has met their duty under Section 2.1.4 and PUC Section 21674 by ensuring that the Project meets these standards.



JOHN WAYNE
AIRPORT
ORANGE COUNTY

October 9, 2023

Rosalinh Ung, Principal Planner
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RE: Newport Beach Housing Element Implementation Noise-Related Amendments

Dear Ms. Ung:

This letter provides comments on behalf of the County of Orange (County), acting in its capacity as the owner and operator of John Wayne Airport, Orange County (SNA) (JWA or Airport), to the City of Newport Beach's (City) proposed noise-related amendments to its Land Use Element, Noise Element, Zoning Code, Newport Place Planned Community, and Newport Airport Village Planned Community (collectively, Housing Element Noise Update or Update). We understand that this Update is intended to accommodate the City's proposed residential sites located within the Airport's 60 and 65 decibel (dB) Community Noise Equivalent Level (CNEL) noise contours that were included in the Housing Element Update that was approved by the City in September 2022.

The Airport has a number of serious concerns relating to this proposed Housing Element Noise Update including, but not limited to, land use, noise, safety and airspace compatibility issues, compliance with the 2006 Cooperative Agreement between the County and the City, and compliance with the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21000 *et seq.*) and the State CEQA Guidelines (Guidelines) (Cal. Code Regs. Tit. 14, § 15000 *et seq.*). Our concerns are addressed in detail below.

Background

As you know, the City recently submitted the Housing Element Noise Update to the County's Airport Land Use Commission (ALUC) for a consistency determination. In August 2023, the ALUC found the City's Update to be inconsistent with the Airport Environs Land Use Plan (AELUP) for JWA due to noise, safety and land use incompatibility issues. The City has indicated that it plans to overrule ALUC's most recent inconsistency determination and adopt the Housing Element Noise Update. Our understanding is that the ALUC will submit a separate comment letter relating to the AELUP overrule and the sufficiency of the City's findings for that overrule. Therefore, this comment letter will not address those important ALUC and findings issues. Rather, our comment letter focuses on the important land use, noise, safety and airspace compatibility issues relating to the City's Housing Element Noise Update, as well as issues relating to the 2006 Cooperative Agreement and the City's compliance with CEQA and the CEQA Guidelines.

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Land Use, Noise, Overflight, and Safety Compatibility Issues

The City's proposed Housing Element Noise Update identifies approximately twenty-eight (28) new sites for potential residential development within the 65 dB CNEL noise contour and twenty-three (23) new sites for potential residential development within the 60 dB CNEL noise contour. In addition, the 2021 Housing Element Update removed a policy that was included in previous Housing Elements prohibiting residential uses within the 65 dB CNEL noise contour, and the City is now proposing to revise or remove similar policies from the Housing Element Noise Update. Our understanding is that the City's proposal identifies sites that can achieve the City's assigned 2021 Regional Housing Needs Assessment (RHNA) for the 2021-2029 planning period. However, many of these sites are now located within the 65 dB CNEL noise contour, which was formerly prohibited by the City's own policies.

Noise is one of the most basic land use compatibility concerns. Federal and state statutes and regulations establish the basis for ensuring land use compatibility in areas around airports. Specifically, both the Federal Aviation Administration (FAA) and the California Department of Transportation, Division of Aeronautics (Caltrans) have adopted noise and land use compatibility standards for residential land uses, schools, and other noise sensitive uses. (See, e.g., 49 U.S.C. § 47502, Pub. Util. Code § 21669, Cal. Code Regs. § 5000 *et seq.*) These standards generally establish a maximum exterior noise level of 65 dB CNEL for private outdoor living areas and an interior noise level of 45 dB CNEL for residential and other sensitive land uses. As indicated in Section 5006 of the California Code of Regulations (Title 21, Division 2.5, Chapter 6):

"The level of noise acceptable to a reasonable person residing in the vicinity of an airport is established as a community noise equivalent level (CNEL) value of 65 dB for purposes of these regulations. This criterion level has been chosen for reasonable persons residing in urban residential areas where houses are of typical California construction and may have windows partially open. It has been selected with reference to speech, sleep, and community reaction."

Because the City's proposed Housing Element Noise Update could result in new residential development being exposed to excessive noise levels outside these standards, we request that the Housing Element Noise Update be revised to reflect only non-residential uses within the 65 dB CNEL noise contour to ensure compliance with these important state and federal noise standards.

In addition to the FAA and Caltrans standards for noise compatibility, general plan guidelines relating to noise compatibility are provided in the California Government Code. (See, e.g., Cal. Gov. Code §65302.) These code provisions require noise contours to be used as a guide for establishing a pattern of land uses that minimizes the exposure of community residents to excessive noise. The Housing Element Noise Update, which potentially would expose residents to excessive noise impacts, is not consistent with these general plan guidelines. We therefore, also request that the City revise its Housing Element Noise Update to, at a minimum, locate any new residential development outside the 65 dB CNEL noise contour and, preferably, locate any new residential development outside the 60 dB CNEL noise contour in order to minimize the exposure of community residents to excessive noise.

Adding new residential sites within the 65 dB CNEL noise contour would not only subject future residents to excessive aircraft noise due to the proximity of the Airport but would also increase

the amount of incompatible land use within the 65 dB CNEL noise contour. If the City does not revise its Update to eliminate all residential sites within the 60 and 65 dB CNEL noise contours, specific noise mitigation requirements should be implemented for any future residences located within these noise contours, including appropriate aviation easement and sound attenuation as required under Cal. Code Regs. Tit. 21 §5037. These requirements could be accomplished through an overlay zone in the Housing Element Noise Update that notifies planners processing projects in the airport environs that aviation easements and appropriate sound attenuation requirements must be met. This type of overlay zone will minimize the risk to both the City and County relating to future sound attenuation requirements and/or noise litigation.

The proposed residential sites also include properties that fall beneath the approach and transitional obstruction imaginary surfaces for JWA. Therefore, potential future residents would be exposed to significant aircraft overflight annoyance as approaching aircraft fly overhead. In the past, residential land uses located under aircraft approach corridors have generated a significant number of noise complaints from affected residents. Therefore, it is important that the City ensures that appropriate overflight notification requirements be put in place relating to these potential residential sites. Again, this type of notification requirement can be implemented through a Housing Element Noise Update overlay zone or through the CEQA process discussed further below.

There are also safety concerns related to proposed residential sites which are located within the AELUP Safety Zones for JWA. The comment letter from the ALUC provides more specifics on this issue, but it is important to note that the proposed residential sites within the Airport environs have been identified in Safety Zone 6: Traffic Pattern Zone and Safety Zone 4: Outer Approach/Departure Zone. As provided in the AELUP's Basic Safety Compatibility Qualities Table (page 9-45), within Safety Zone 4, "[i]n undeveloped areas, limit residential uses to very low densities (if not deemed unacceptable because of noise); if alternative uses are impractical, allow higher densities as infill in urban areas." In this instance, locating residential uses within Safety Zone 4 would place future residents within close proximity to the Airport and locate residential development directly under a general aviation, low-altitude, primary flight corridor. It is important that the City recognize these safety issues in the context of the Housing Element Noise Update and make adjustments and modifications to eliminate, where possible, these safety concerns.

Further, there are numerous flights over the proposed residential sites in the Airport environs, with a concentration of flights over the primary approach corridor and proposed sites east of the Airport within Safety Zone 6 and the transitional surface for JWA. The location and number of proposed new residential sites within Safety Zones 4 and 6, with some directly under the flight path of commercial and general aviation flights, again suggests that these new residential land uses would be incompatible with the operations at JWA and subject the future residents to not only excessive noise but also safety risks.

In addition to the land use, noise, overflight, and safety compatibility issues identified above, many of the residential sites included in the Housing Element Noise Update are in the Approach Surface, Transitional Surface, and Horizontal Surface of the Federal Aviation Regulation (FAR) Part 77 Obstruction Imaginary Surfaces for JWA. (See, e.g., 49 U.S.C. § 44718, 49 U.S.C. § 46301.) Although no height increases are proposed at this time, and with approximate ground elevations of 46 to 53 feet, the City's existing maximum building heights for the sites would not penetrate the Obstruction Imaginary Surfaces, the City has indicated that proposals for changes

to the existing height limits may be considered in the future. Therefore, it is important that the City is aware of this issue and the importance of compliance with the FAR Part 77 surfaces for JWA.

Cooperative Agreement Between the City and County

In addition to the land use, noise, safety, and airspace compatibility issues identified above, if the City moves forward with approving the Housing Element Noise Update which places new residential sites within the 65 dB CNEL noise contour, such actions will undermine the goals set forth in the Cooperative Agreement between the City and County of Orange, dated November 1, 2006. In that Agreement, the City and County agreed to “expand their longstanding efforts to promote compatibility between operations at John Wayne Airport...and land uses within and in proximity to the City.”

Furthermore, the City agreed to become a “consistent” agency with respect to residential land uses within the airport vicinity and to preserve certain longstanding land use plans, such as the Santa Ana Heights Specific Area Plan (SAHSAP) that were designed to harmonize land uses in Santa Ana Heights with air carrier operations at JWA. The City agreed to retain this consistent agency status through the term of the Agreement provided that the AELUP CNEL contour is not expanded in comparison to that which is in the AELUP as of the effective date. Importantly, the noise contours that the City proposed to utilize for the ALUC Update consistency determination are smaller than those provided in the AELUP. In addition, the City agreed not to repeal/modify the SAHSAP without County consent. The proposed Housing Element Noise Update would require changes to the City Zoning Code, which in turn requires an amendment to the SAHSAP. Consistent with the 2006 Cooperative Agreement, the City is required to obtain County consent prior to any amendments to the SAHSAP.

CEQA Compliance

With respect to CEQA compliance, because the City’s Housing Element Noise Update submittal allows new residential sites within the 65 dB CNEL noise contour, there is a significant land use and noise impact for purposes of CEQA. In addition, and as discussed in detail above, there are also significant safety, airspace protection, and related environmental issues that must be addressed in the CEQA context.

The City has mistakenly indicated that the proposed Housing Element Noise Update is exempt from CEQA pursuant to Guidelines section 15183. (See City of Newport Beach Planning Commission Staff Report, dated August 3, 2023, Agenda Item No. 4, Housing Element Implementation, Noise-Related Amendments (PA2022-0201), pp. 1, 10-11; City of Newport Beach Resolution No. 2023-52, Section 6.) However, the referenced CEQA provision does not apply to projects otherwise consistent with a General Plan’s development density parameters where it is “necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” (Guidelines, §15183(a).) As described throughout this comment letter, the proposed Housing Element Noise Update would facilitate the future development of residential land uses in a geographic area that is subject to potentially significant aviation-related noise, airspace, overflight and safety environmental concerns. Guidelines section 15183 does *not* provide a CEQA compliance pathway that permits the City to abdicate its duty to evaluate, disclose and mitigate these “peculiar” environmental concerns that are unique to the airport environs. (Guidelines, §15183(b).)

The City additionally has indicated that the proposed Housing Element Noise Update is not subject to further environmental review based on the erroneous premise that its impacts were fully analyzed in Final Environmental Impact Report (FEIR) 617, which was prepared for the amendments to the 1985 Settlement Agreement entered into by and between the County and the Orange County Board of Supervisors, the City of Newport Beach, Stop Polluting Our Newport, and the Airport Working Group of Orange County, Inc., (the Settlement Amendment) (see, Board of Supervisors Resolution No. 14-084 [September 30, 2014] and Board of Supervisors Resolution No. 14.088 [September 30, 2014]). (See City of Newport Beach Planning Commission Staff Report, dated August 3, 2023, Agenda Item No. 4, Housing Element Implementation, Noise-Related Amendments (PA2022-0201), pp. 1, 10-11; City of Newport Beach Resolution No. 2023-52, Section 6.) FEIR 617, however, did not analyze the potentially significant environmental impacts of future residential land uses within the 65 dB CNEL noise contour. This is because, at the time that FEIR 617 was prepared, the City's policies did not allow residential land uses within the 65 dB contour and none were proposed. (See, e.g., FEIR 617, Table 4.5-10 [Goals and Policies Consistency Analysis], City of Newport Beach General Plan Policy 6.15.3: Airport Compatibility ["Require that ... residential development be located outside of the 65 dBA CNEL noise contour specified by the 1985 JWA Master Plan."]) Therefore, the City cannot rely on FEIR 617 for CEQA compliance because it does not analyze the potentially significant land use compatibility, noise, overflight, and safety impacts, among other impacts, of locating future residential development within the 65 dB CNEL noise contour. (See, e.g., CEQA Guidelines §§15006(f) and 15153 [permitting a lead agency to reuse a prior EIR for another project only when it "adequately addresses the proposed project" and where it can be demonstrated that "such projects are essentially the same in terms of environmental impact"]; see also CEQA Guidelines §15162 [providing that a subsequent EIR shall be prepared where "substantial changes" to the project are proposed which trigger the involvement of new significant environmental effects].)

Also, and importantly, CEQA is the vehicle not only for the discussion and analysis of potentially significant impacts, but also for the imposition of appropriate mitigation, including, but not limited to, avigation easements and sound attenuation. (See, e.g., Guidelines §15002(a)(1)-(3).) The City must prepare and certify adequate CEQA analysis, including approval of adequate mitigation for significant environmental impacts, prior to considering approval and adoption of the Housing Element Noise Update.

Due to the proposed policy amendments which now would allow residential uses within the 65 dB CNEL noise contour, CEQA compliance is required *prior* to approval of the Housing Element Noise Update. The City cannot wait for a future residential project proposal. CEQA prohibits this type of deferral and piecemealing of the analysis of impacts. (See, e.g., Guidelines §15004 [CEQA compliance "should be prepared as early as feasible in the planning process"]; Guidelines §15378 [the "project" is the "whole of an action" and includes activities "directly undertaken by any public agency including ... the adoption and amendment of local General Plans or elements thereof"].)¹

¹ It is noted that, on June 27, 2023, the City published a Notice of Preparation (NOP) for preparation of a Program EIR relating to its proposed Housing Implementation Program. In the NOP's "Project Summary," the City explains that its Program EIR will "evaluate the potential environmental effects of the implementing actions associated with the 2021-2029 Housing Element," including the housing sites identified in the so-called "Airport Area" (see, e.g., Figure 2E therein) and corresponding revisions to the City's General Plan Land Use Element and Zoning Code. It is unclear how the City's proposed Housing Implementation Program relates to the City's proposed Housing Element Noise Update that is the subject of this comment letter. Absent additional explanation, it appears that the City is improperly piecemealing the CEQA review of the totality of the City's efforts to implement its 2021-2029 Housing Element. (The

Conclusion

In conclusion, the City's proposed Housing Element Noise Update has the potential to increase incompatible land use within the 65 dB CNEL noise contour, which could result in significant land use compatibility, noise, safety, and overflight impacts and additional encroachment of incompatible land uses within the airport environs. As indicated above, the City must comply with CEQA requirements to adequately analyze these potentially significant environmental impacts prior to considering approval of this Update. In addition, the City's proposed Housing Element Noise Update is inconsistent with the 2006 Cooperative Agreement entered into between the City and the County. Revisions are required to the Update to remove any residential uses within the 65 and 60 dB CNEL noise contours to ensure continued compliance with this important Agreement.

We continue to appreciate our close relationship with the City and will make ourselves available to discuss the issues identified in this letter at your convenience. Our hope is that we can continue to work cooperatively to ensure land use compatibility surrounding the Airport.

Sincerely,



Charlene V. Reynolds
Airport Director

Cc: Frank Kim, County Executive Officer
Lilly Simmering, Deputy County Executive Officer
Leon Page, County Counsel
Nicole Walsh, Senior Assistant County Counsel



AIRPORT LAND USE COMMISSION

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October 11, 2023

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Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

Subject: Response to Notice of Intent to Overrule the Airport Land Use Commission for Orange County Determination on Housing Element Implementation

Dear Ms. Ung.

We are in receipt of the City of Newport Beach (City) letter dated September 13, 2023, and City Council Resolution No. 2023-52 notifying the Airport Land Use Commission (ALUC) for Orange County of the City's intent to overrule the ALUC's inconsistency determination on the proposed Housing Element Implementation – Noise Related Amendments. In accordance with Section 21676 of the Public Utilities Code, the ALUC submits the following comments addressing the proposed overrule findings for the above-referenced project. These comments shall be included in the public record of a final decision to overrule the ALUC.

Please be advised that California Public Utilities Code (PUC) Section 21678 states: "With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation."

Background

On August 17, 2023, the ALUC for Orange County found the proposed Housing Element Implementation - Noise Related Amendments to be inconsistent with the *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)* on a 4-0 vote. The inconsistent finding was based on AELUP Sections 2.1.1, 2.1.2, and 2.1.4, and PUC Sections 21674(a) and 21674(b).

Pursuant to Section 1.2 of the AELUP for JWA, the purpose of the AELUP is to safeguard the general welfare of the inhabitants within the vicinity of the airport and to ensure the continued operation of the airport. Specifically, the AELUP seeks to protect the public from the adverse effects of aircraft noise to ensure that people and facilities are not concentrated in areas

susceptible to aircraft accidents, and to ensure that no structures or activities adversely affect navigable airspace. Additionally, Section 2.1.4 of the AELUP for JWA and PUC Section 21674 charge the Commission to coordinate at the local level to ensure compatible land use planning. Therefore, because of the City's proposed amendment and potential residential uses, that would occur within Community Noise Equivalent Levels (CNEL) 60 and 65, and Safety Zones 4 and 6, which include exposure to significant risks, noise and aircraft overflight, the City's proposed actions are inconsistent with the AELUP.

ALUC has the following additional comments regarding the findings and facts of support included in Resolution No. 2023-52.

Response to Finding and Fact in Support A - Regarding Noise Standards:

Pursuant to AELUP Section 2.1.1, “. . . aircraft noise emanating from airports may be incompatible with the general welfare of the inhabitants within the vicinity of an airport. . .” As noted in the City's discussion, the CNEL standards are set forth in the AELUP. As part of the review of the proposed Housing Element Implementation - Noise Related Amendments, it was noted that the “suitable” sites are identified within the JWA 65 dBA and 60 dBA CNEL noise contours. The ALUC believes that the proposed new locations for residential units would be highly affected by airport noise due to the close proximity to the airport (some within less than one mile from the runway end and others directly across the street from the airport), and that the past and current land use designation of Open Space and/or Commercial is the appropriate designation for this site.

One of the proposed amendments to the Noise Element is to replace the existing noise contours which are currently consistent with the adopted *AELUP for JWA*, with more narrow noise contours which were included in 2014 Settlement Agreement EIR 617. Although a CEQA finding is not required for purposes of making a consistency determination, EIR 617 did not provide an analysis of the potentially significant impacts of placing future residential uses within the 65 dB CNEL contour, therefore, the City's reliance on FEIR 617 is misplaced and inconsistent with the *AELUP for JWA*.

The proposed Housing Element Implementation - Noise Related Amendments would allow residential uses which are not suitable and would subject the future residents to excessive noise regardless of which noise contours are utilized. The ALUC has historically found residential uses in the vicinity of JWA to be inconsistent with the *AELUP for JWA*.

Response to Fact in Support B - Regarding Safety:

Pursuant to AELUP Section 2.1.2, “[s]afety and compatibility zones depict which land uses are acceptable and which are unacceptable in various portions of airport environs. The purpose of these zones is to support the continued use and operation of an airport by establishing compatibility and safety standards to promote air navigational safety and to reduce potential safety hazards for persons living, working or recreating near JWA.”

The proposed housing sites in the Housing Element Update and subject to the Noise Related Amendments include property located in Safety Zone 4 – Outer Approach/Departure Zone, and Safety Zone 6 – Traffic Pattern Zone 6. Many of the sites located in Safety Zones 4 and 6 are also located in the 65 dB CNEL contour. According to the California Airport Land Use Planning Handbook, noise and overflight should be considered in Safety Zone 6 and residential uses should be limited to low density in Safety Zone 4. Flight tracks for the property were included in the ALUC staff report and are attached to this letter. There are few residential uses surrounding the proposed suitable sites, none as dense as the City's proposed sites. Considering the proposed densities, proximity to JWA and the number of flights over the property, the inclusion of these new dense sites in the proposed Housing Element Implementation - Noise Related Amendments is inappropriate.

Response to Fact in Support C - Regarding "Intent of the AELUP":

By virtue of being clearly stated in *AELUP for JWA* Sections 1.2 "Purpose and Scope" and 2.0 "Planning Guidelines," the ALUC understands the complex legal charge to protect public airports from encroachment by incompatible land use development, while simultaneously protecting the health, safety and welfare of citizens who work and live in the airport's environs. To this end, and as also statutorily required, ALUC proceedings are benefited by several members having expertise in aviation. Based upon careful consideration of all information provided, and input from ALUC members with expertise in aviation, the ALUC unanimously found the proposed Housing Element Implementation - Noise Related Amendments to be Inconsistent with the *AELUP for JWA*.

We urge the City Council to take ALUC's concerns into consideration in its deliberations prior to deciding whether to overrule ALUC. In the event the City overrules ALUC's determinations, ALUC requests that individual projects within the airport influence area are submitted to ALUC for review. Thank you for the opportunity to provide these comments.

Sincerely,

DocuSigned by:

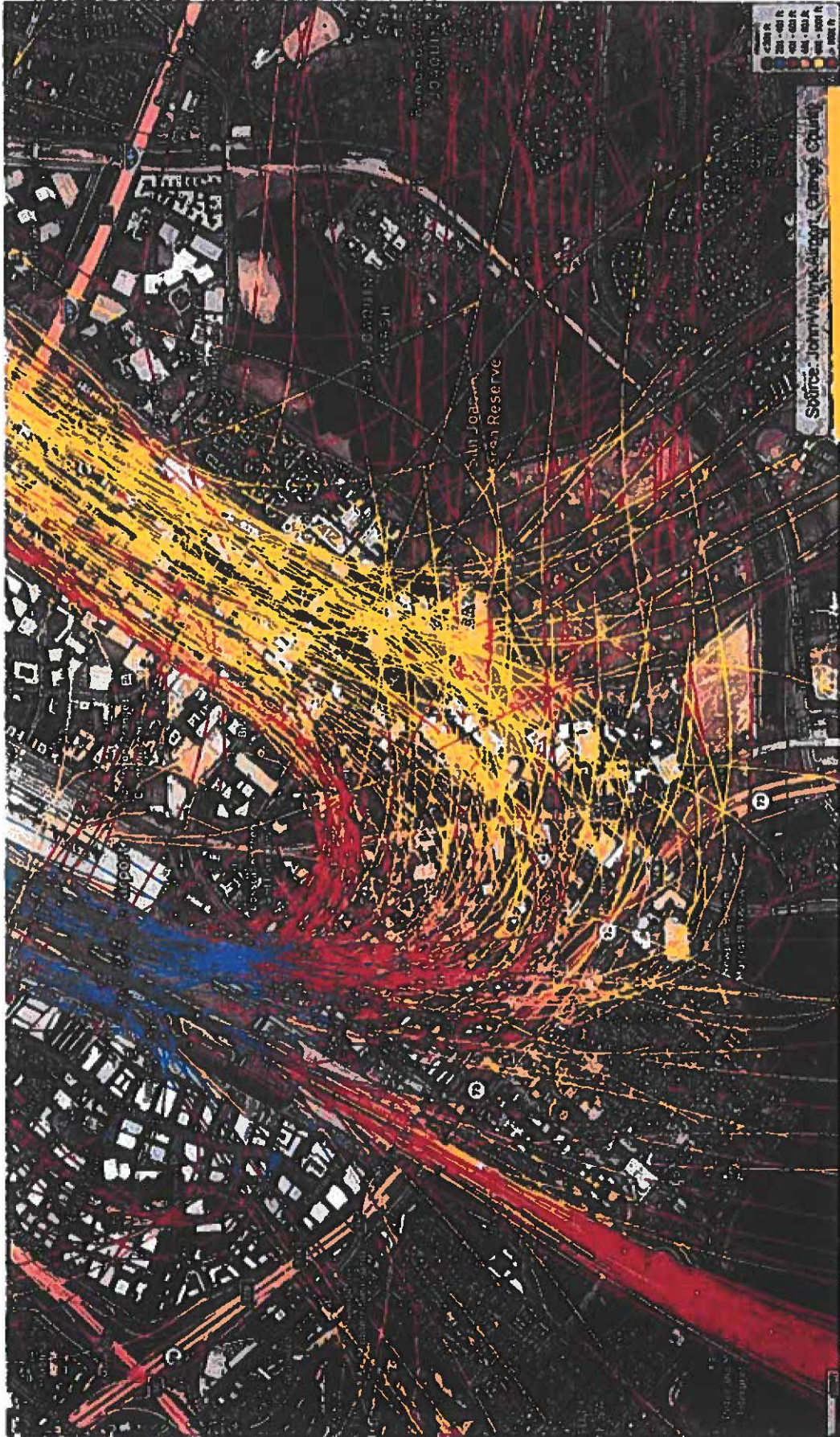
Mark Monin

008FA23EFFF82438
Mark Monin
Vice Chairman

Attachment: John Wayne Airport Flight Tracks for Housing Element Implementation - Noise Related Amendments

cc: Members of Airport Land Use Commission for Orange County
Members of Newport Beach City Council
Jonathan Huff, Caltrans/Division of Aeronautics

John Wayne Airport Altitude Analysis
481 Operations
Tuesday, April 11, 2023



Source: John Wayne Airport, Orange County

ATTACHMENT 7

JOHN WAYNE AIRPORT
ORANGE COUNTY

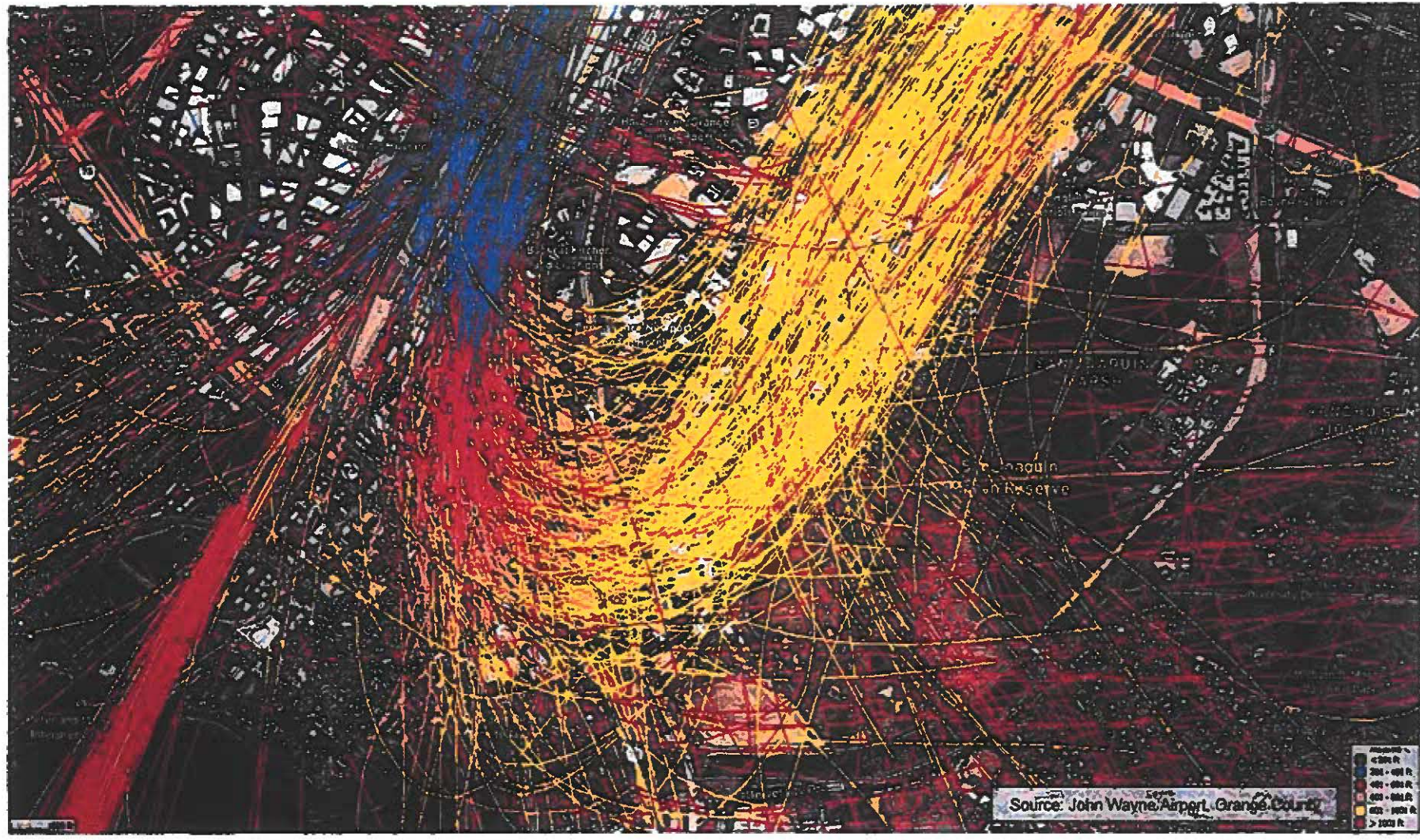
John Wayne Airport Access & Noise Office

John Wayne Airport Altitude Analysis 723 Operations Thursday, April 20, 2023





John Wayne Airport Altitude Analysis
603 Operations
Saturday, April 15, 2023



John Wayne Airport Altitude Analysis
613 Operations
Tuesday, July 18, 2023



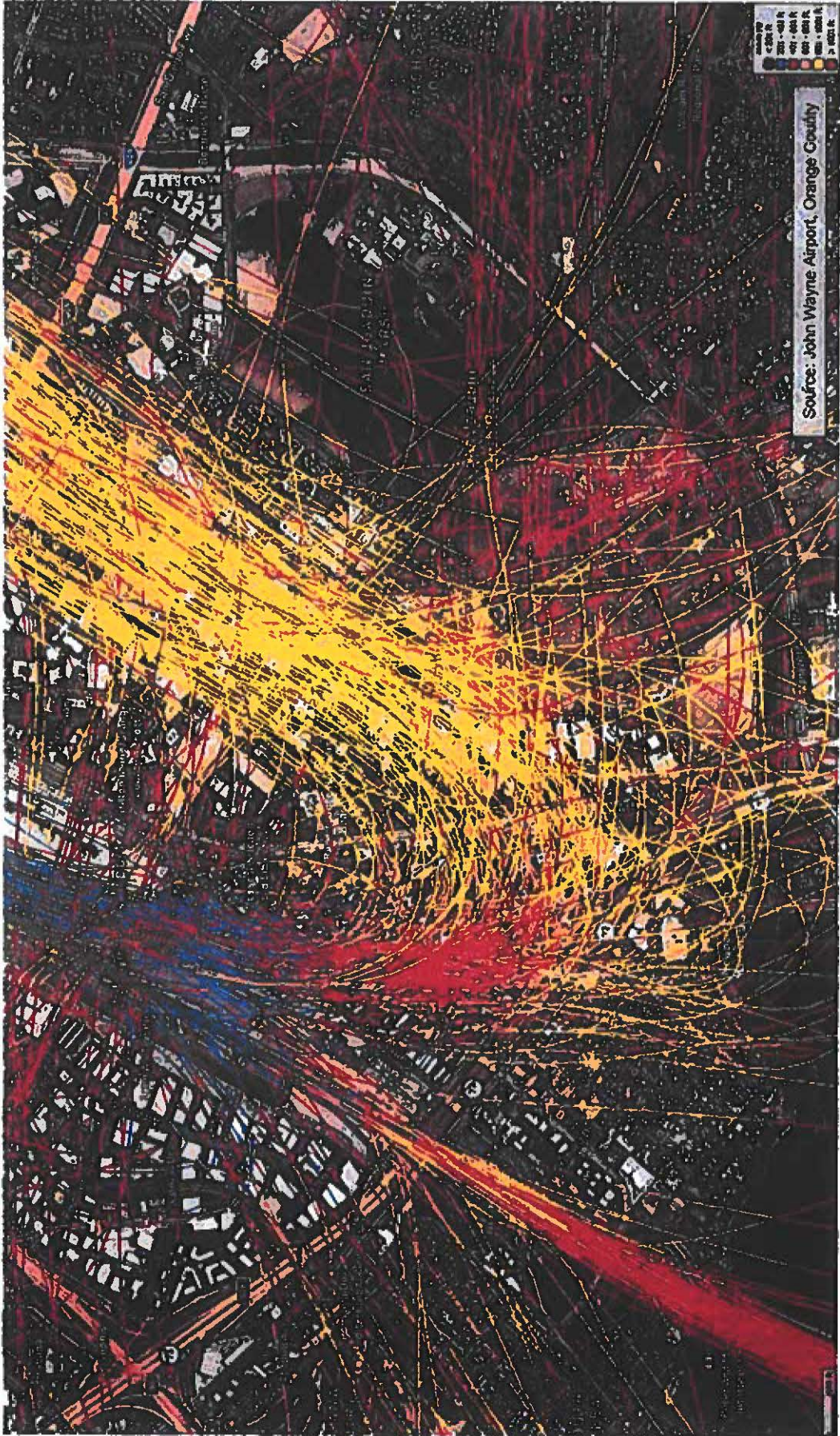
John Wayne Airport Altitude Analysis
711 Operations
Thursday, July 27, 2023



John Wayne Airport Access & Noise Office

**John Wayne Airport Altitude Analysis
567 Operations
Saturday, July 15, 2023**

JOHN WAYNE
AIRPORT
ORANGE COUNTY



DEPARTMENT OF TRANSPORTATION

AERONAUTICS Program— M.S. #40
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 654-4959
FAX (916) 653-9531
TTY 711
www.dot.ca.gov



Making Conservation
a California Way of Life.

October 13, 2023

Ben Zdeba, AICP, Principal Planner
City of Newport Beach
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660-3267

Electronically Sent
bzdeba@newportbeachca.gov

Dear Mr. Zdeba:

The Aeronautics Program (Program) at the California Department of Transportation (Caltrans) appreciates receiving the Notice of Intent dated September 13, 2023, from the City of Newport Beach (City), to overrule a determination of the Orange County Airport Land Use Commission (ALUC). The ALUC has reported that the Sixth Cycle Housing Element Update Project (Project) is inconsistent with the Airport Environs Land Use Plan (AELUP) for the John Wayne Airport (JWA). The Notice of Intent concerns the City's Resolution (No.) 2023-52 (Resolution), and specific "Facts in Support" related to the AELUP. In advance of a public hearing on the Resolution to consider overruling the ALUC's determination, the Program is providing the following comments pursuant to California Public Utilities Code (PUC) section 21676.

Please accept this updated response initially dated November 24, 2021.

Facts in Support #1 – The Project is consistent with the noise standards of the AELUP.

Citing AELUP section 3.2.3 for "residential uses to be developed with advanced insulation systems to bring the sound after attenuation to no more than 45 dB inside" overlooks a key provision of the section that is seen prior to quoting the conclusion of the section that says, "residential uses within the 65- 70 dBA CNEL noise contour are required to be 'indoor - oriented' to preclude noise impingement on outdoor living areas." The provision in between says, "All residential units are inconsistent in this area unless it can be shown conclusively that such units are sufficiently sound attenuated for present and projected noise exposures, which shall be the energy sum of all noise impacting the project, so as not to exceed an interior standard of 45 dB CNEL."

No "conclusive" support is provided as part of Facts in Support #1. Instead, the statement is made that the City's existing "General Plan Land Use Element Policy LU 6.15.3 and Noise Element Policy N 3.2 currently require that residential development in the Airport Area are to be located outside of the 65 dBA CNEL noise contour." A claim that follows says, "as part of the City's comprehensive update to the General Plan, these policies will be updated to reflect and allow the additional housing opportunity sites in the higher impact noise zones."

The City's proposed overrule of the ALUC, then, is based on a claim yet to be proven, whereas the ALUC's determination of inconsistency is related to existing fact. The Program can only conclude that the Project does not satisfy requirements in PUC section 21670, as

claimed in the Notice of Intent for the purpose of public protection from hazards near airports.

Facts in Support #2 – The proposed Project is consistent with the safety standards of the AELUP.

This Fact in Support is deficient for not adequately citing the reference to Safety Zone 6 (Traffic Pattern Zone) of the AELUP. As used in the Notice of Intent, the statement that says, "risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence," is drawn from the AELUP, but it overlooks the AELUP's reference to the 2002 California Airport Land Use Planning Handbook (Handbook; published by the Program). It is Table 9B in the 2002 Handbook that refers to "a low likelihood of accident occurrence." Unfortunately, the AELUP does not account for the current Handbook of 2011. The City also does not account for it.

The 2011 Handbook allows for low risk of accidents in the zone for an airport traffic pattern, but it goes further to quantify accident risk (Chapter 4, page 4-25). Owing to a relatively large area, the Handbook indicates 18-29 percent of accidents near a runway could occur in the traffic pattern zone (attributable also to lower and slower flight profiles for less time and altitude to recover from distress). The 2011 Handbook also allows for residential land use in the traffic pattern zone, but with the condition that says, "where ambient noise levels are low."

By accounting for this discrepancy, the Program recommends that the City evaluate ambient noise levels in the JWA Safety Zone 6 before taking further action on the proposed ALUC overrule. It would be a prudent means for abiding by PUC section 21670 "to prevent new noise and safety problems."

Facts in Support #3 – The proposed Project is consistent with the purpose and intent of the AELUP and will not result in incompatible land uses adjacent to JWA.

Citing the City's intention related to the Project that says, "any development on the proposed housing opportunity sites will comply with the noise criteria and safety standards," contained in Sections 2 and 3 of the AELUP, is appreciated by the Program. Sections 2 and 3 of AELUP provide overall policies for planning and land use around JWA, including certain specific criteria. The points made in this letter concerning specific criteria should be considered for their value to ensure accurate compliance with PUC section 21670. Otherwise, the Program contends that any less effort compromises both the City's declared position in the Notice of Intent and the public's welfare.

Sincerely,

Originally signed by

Jonathan Huff
Associate Transportation Planner

c: Lea U. Choum, Executive Officer, Orange County Airport Land Use Commission; ALUCinfo@ocair.com



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

October 24, 2023

Ali Pezeshkpour, Planning Manager
City of Santa Ana Planning and Building Agency
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

Subject: Response to Notice of Intent to Overrule ALUC's July 20, 2023 Inconsistent Determination for Related Bristol Specific Plan

Dear Mr. Pezeshkpour:

We are in receipt of the City of Santa Ana's August 31, 2023 letter with attached City Council Resolution No. 2023-060, and the September 26, 2023 revised letter with attached findings, which notify the Airport Land Use Commission (ALUC) for Orange County of the City's intent to overrule the ALUC's inconsistency determination on the proposed Related Bristol Specific Plan. In accordance with Section 21676 of the Public Utilities Code, the ALUC submits the following comments addressing the proposed overrule findings for the above-referenced project. These comments shall be included in the public record of a final decision to overrule the ALUC.

Please be advised that California Public Utilities Code (PUC) Section 21678 states: "With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation."

Background

On July 20, 2023, the ALUC for Orange County found the proposed Related Bristol Specific Plan to be inconsistent with the *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)* on a 5-0 vote. The inconsistent finding was based on AELUP Section 3.2.1 which states, "within the boundaries of the AELUP, any land use may be found to be inconsistent with the AELUP which ... permits structures of excessive height in areas which would affect adversely the continued operation of the airport; or permits activities or facilities that would affect adversely aeronautical operations." The proposed Related Bristol Specific Plan would allow buildings up to 25 stories and/or 285 feet which would penetrate the Federal Aviation

Regulation (FAR) Part 77 Horizontal Obstruction Imaginary Surface for JWA. ALUC has the following additional comments regarding the findings and facts of support included in the September 26, 2023 letter.

Response to Finding and Fact in Support “a” Regarding Height:

The City contends that since the proposed zone change would allow the establishment of a specific plan, but “does not specify exact locations and heights of each implementing development that falls within the scope of the specific plan,” that the ALUC lacks evidence of the Project’s inconsistency with the AELUP.” The proposed specific plan would allow for buildings with residential uses up to 25 stories or 285 feet in height which would penetrate the 206 feet Horizontal Surface for JWA regardless of where they are located within the specific plan boundaries. Such structures have potential to adversely impact the continued operation of the airport and other aeronautical operations.

Response to Fact in Support “b” Regarding Mitigation Measures:

The City states that during the July 20, 2023 meeting, City staff and the project applicant provided additional information indicating that the City will review projects within the specific plan area and require Federal Aviation Administration (FAA) notification for buildings exceeding 200 feet in height, and stated that the Final Supplemental Environmental Impact Report for the project would contain a mitigation measure requiring “Notice of Airport in Vicinity” to be included in all lease/rental agreements and outdoor signage informing the public of the presence of operating aircraft. The City asserts that these measures would demonstrate consistency with AELUP Section 3.2.1. The ALUC appreciates the inclusion of these mitigation measures, however the ALUC determination was based on the fact that the proposed specific plan would allow for buildings with residential uses up to 25 stories or 285 feet in height which would penetrate the 206 feet Horizontal Surface for JWA.

Response to Fact in Support “c” Regarding Noise:

The City states that because the project is located outside of the 60 and 65 dBA CNEL noise contours, and because mitigation measures will be required that the project is consistent with the AELUP. While the ALUC appreciates that the project will not place residents within the 60 and 65 dBA noise contours, noise was not a sole factor in ALUC’s determination of inconsistency.

Response to Fact in Support “d” Regarding Safety:

The City states that because the project is outside of the Safety Zones for JWA, and because the City will require FAA Determinations of No Hazard to Air Navigation that the project is consistent with the AELUP. Section 3.2.1 of the AELUP states, “within the boundaries of the AELUP, any land use may be found to be inconsistent with the AELUP which ... permits structures of excessive height in areas which would affect adversely the continued operation of the airport; or permits activities or facilities that would affect adversely aeronautical operations.” Moreover, a finding of No Hazard to Air Navigation from the FAA does not equate to a

consistency determination by the ALUC. The ALUC may find a project Inconsistent based on other determinations. The ALUC may also utilize criteria for protecting aircraft traffic patterns at airports which may differ from those contained in FAR Part 77, if evidence of health, welfare, or air safety justify such an action. As described herein, the ALUC found evidence of air safety issues, among other things.

Response to Fact in Support “e” Regarding Height:

The proposed project area is located within the FAA FAR Part 77 Horizontal Obstruction Imaginary Surface for JWA which would be penetrated at 206’ above mean sea level (AMSL). The airspace above 206’ AMSL is reserved for air navigation. The Specific Plan would allow buildings up to 25 stories and/or 285 feet in height and therefore would penetrate the horizontal surface and enter airspace reserved for air navigation.

In Section 2.1.3 of the *AE LUP for JWA*, the Commission has incorporated the standards for height limits for determining obstructions and has incorporated the definitions of “imaginary surfaces” for airports as defined in the FAA FAR Part 77. The “imaginary surfaces” are defined by means of elevations heights and slopes in relation to individual airports, the spaces above which are reserved for air navigation. To ensure the safe operation of aircraft activity at JWA, structures anywhere in the JWA airport planning area should not exceed the applicable elevations defined in FAR Part 77 (Objects Affecting Navigable Air Space).

Response to Fact in Support “f” Regarding Overflight:

The July 20, 2023 ALUC staff report included flight tracks over the City of Santa Ana on a typical weekday, on a reverse-flow weekday and on a typical Saturday in January. The ALUC recommends that the maximum structure heights, including all rooftop equipment and/or architectural details, be reduced to below 206 feet AMSL, in order to protect the airspace reserved for air navigation.

Response to Fact in Support “g” Regarding Heliports:

As the City states, heliports were not included as part of this project, therefore heliports were not reviewed by ALUC.

Response to Fact in Support “h” Regarding Zone Change:

Finding “h” summarizes Findings “a” through “g” and refers to flight tracks. The Inconsistent Finding by ALUC was not based on flight tracks alone but based on the fact that the proposed Related Bristol Specific Plan would allow buildings to penetrate the FAR Part 77 Horizontal Obstruction Imaginary Surface for JWA and enter airspace reserved for air navigation. This is problematic for the safe operation of the airport and other aeronautical operations.

We urge the City Council to take ALUC's concerns into consideration in its deliberations regarding whether to overrule ALUC. Thank you for the opportunity to provide these comments.

Sincerely,

Lee U. Chown, Executive Officer

Gerald A. Bresnahan *for*
Chairman

cc: Members of the Airport Land Use Commission for Orange County
Members of Santa Ana City Council
Jonathan Huff, Caltrans/Division of Aeronautics

California Department of Transportation

P.O. BOX 942873 | SACRAMENTO, CA 94273-0001
(916) 654-2852 | TTY 711
www.dot.ca.gov



November 07, 2023

Ali Pezeshkpour, Planning Manager
City of Santa Ana
Planning and Building Agency
20 Civic Center Plaza
Santa Ana, CA 92701-4058

Electronically Sent
APezeshkpour@santa-ana.org

Dear Mr. Pezeshkpour:

One of the goals of the California Department of Transportation (Caltrans), Aeronautics Program (Program), is to assist cities, counties, and Airport Land Use Commissions (ALUC) in the development and implementation of policies that protect the safety and general welfare of their communities in which aeronautical activities take place. We encourage collaboration with our partners in the planning process and thank you for including us in the review of the Notice of Intent to overrule the Orange County ALUC determination of inconsistency with the Bristol Specific Plan for the City of Santa Ana.

On September 26, 2023, the Division received a notification letter by Certified Mail from the City of Santa Ana (City) regarding a proposed overrule for the proposed Bristol Specific Plan (Plan). The Program agrees with the John Wayne Airport (JWA) and the Orange County ALUC that the City's proposed General Plan amendment and subsequent zoning change could result in proposed projects that penetrate FAA (Federal Aviation Administration "FAR (Federal Aviation Regulations) Part 77 Airspace," in this case exceeding 206 Feet horizontal Surface for JWA.

Since the proposed change is a specific plan and does not include any specific projects, the city asserts that this plan does not impact aviation safety. If this plan specifically stated that projects that penetrate FAR 77 Airspace would not be approved, this assertion would be appropriate; however, there is no indication that this would be the case. It is in the interest of the City, JWA, the ALUC and the Program to protect FAR 77 airspace from penetration; even if the intent is to request a determination from FAA as to whether a specific project penetrates FAR 77 airspace. This is in accordance with the AELUP for JWA, section 2.1.3 pages 13-14, which states:

A Determination of No Hazard to Air Navigation does not automatically equate to a Consistency determination by the ALUC. The FAA may also conclude in their aeronautical study that a project is an Obstruction but not a Hazard to Air Navigation. The Commission

"Provide a safe and reliable transportation network that serves all people and respects the environment"

Ali Pezeshkpour
November 07, 2023
Page 2

may find a project Inconsistent based on an Obstruction determination. The commission may utilize criteria for protecting aircraft traffic patterns at individual airports which may differ from those contained in FAR Part 77, should evidence of health, welfare, or air safety surface sufficient to justify such an action.

The Program understands the determination of inconsistency by the ALUC to be following the intent of the AELUP for JWA and its role to concurrently protect public safety and airport viability in concert with local development, as directed by PUC 21674 (a).

Please note: The Program's comments are to be included in the public record of any decision to overrule the ALUC.

If you have questions or we may be of further assistance, please contact me via email at jonathan.huff@dot.ca.gov.

Sincerely,

Originally signed by

Jonathan Huff, Aviation Planner
Office of Aviation Planning

c: Ms. Lea Choum, Executive Officer, Orange County Airport Land Use
Commission, 3160 Airway Avenue, Costa Mesa, CA 92626-4608; lchoum@ocair.com



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue
Costa Mesa, CA 92626

Phone (949) 252-5170

Fax (949) 252-6012

December 5, 2023

David Lee, Senior Planner
Community Development
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: ALUC Submittal Incomplete

Dear Mr. Lee:

This is to confirm that Airport Land Use Commission (ALUC) staff has received your referral request for a consistency review of the **1401 Quail Street Residences General Plan and Planned Community Text Amendments** at the December 21, 2023, meeting. Your December 1, 2023, request for a review and consistency determination by the Commission is hereby deemed incomplete for the following reasons:

- Incorrect noise contour location referred to in submittal forms.
- Incorrect noise contours included in Attachment 6 of the submittal.

As stated at the August 17, 2023, ALUC meeting, and included in the Staff Report for Item 1: Housing Implementation/Noise-Related Amendments, "the AELUP continues to reflect the EIR 508 noise contours for purposes of determining whether a project is consistent with the AELUP noise policies and provisions. Therefore, for purposes of the AELUP consistency analysis, the City and ALUC are required to utilize the noise contours that are provided in the AELUP. Neither the City nor the ALUC can provide a consistency analysis based on different and updated noise contours unless and until those noise contours have been included in the AELUP. Rather, any submittal must be based on the policies and contours currently in the existing AELUP."

Please resubmit your project with the information indicated above so that it can be agendized for the next Commission meeting of January 18, 2024. You may contact us at (949) 252-5170 or at alucinfo@ocair.com if you need additional information regarding the submittal of this project.

Sincerely,

Julie Fitch

Julie Fitch
ALUC Staff Planner



AIRPORT LAND USE COMMISSION
FOR ORANGE COUNTY
3160 Airway Avenue
Costa Mesa, CA 92626

Phone (949) 252-5170
Fax (949) 252-6012

December 5, 2023

Liz Westmoreland, Senior Planner
Community Development
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: ALUC Submittal Incomplete

Dear Ms. Westmoreland:

This is to confirm that Airport Land Use Commission (ALUC) staff has received your referral request for a consistency review of the **Residences at 1400 Bristol Street** at the December 21, 2023, meeting. Your December 1, 2023, request for a review and consistency determination by the Commission is hereby deemed incomplete for the following reasons:

- Incorrect address provided in the subject line of the submittal letter.
- Incorrect noise contour location in submittal forms.
- Incorrect noise contours included in Attachment 6 of the submittal.

As stated at the August 17, 2023, ALUC meeting, and included in the Staff Report for Item 1: Housing Implementation/Noise-Related Amendments, "the AELUP continues to reflect the EIR 508 noise contours for purposes of determining whether a project is consistent with the AELUP noise policies and provisions. Therefore, for purposes of the AELUP consistency analysis, the City and ALUC are required to utilize the noise contours that are provided in the AELUP. Neither the City nor the ALUC can provide a consistency analysis based on different and updated noise contours unless and until those noise contours have been included in the AELUP. Rather, any submittal must be based on the policies and contours currently in the existing AELUP."

Please resubmit your project with the information indicated above so that it can be agendaized for the next Commission meeting of January 18, 2024. You may contact us at (949) 252-5170 or at alucinfo@ocair.com if you need additional information regarding the submittal of this project.

Sincerely,

Julie Fitch

Julie Fitch
ALUC Staff Planner



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

December 18, 2023

David Lee, Senior Planner
Community Development
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: ALUC Referral Confirmation

Dear Mr. Lee:

This is to confirm that Airport Land Use Commission (ALUC) staff has received your referral request for a consistency review of the **1401 Quail Street Residences General Plan and Planned Community Text Amendments**.

Your December 1, 2023 request with the December 7, 2023, revisions is hereby deemed complete for a consistency review at the next Commission meeting of January 18, 2024, unless otherwise noticed. Your attendance at the meeting would be appreciated in case there are questions regarding this item. The meeting will be held at 4:00 p.m. at:

JWA/Airport Commission Room
3160 Airway Avenue
Costa Mesa, CA 92626

A copy of the meeting agenda and staff report regarding your item will be provided to you prior to the Commission meeting. You may contact us at (949) 252-5170 or at alucinfo@ocair.com if you need additional information regarding the submittal of this project.

Sincerely,

Julie Fitch
Staff Planner



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

December 18, 2023

Liz Westmoreland, Senior Planner
Community Development
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Subject: ALUC Referral Confirmation

Dear Ms. Westmoreland:

This is to confirm that Airport Land Use Commission (ALUC) staff has received your referral request for a consistency review of the **1400 Bristol Street General Plan and Planned Community Text Amendments**.

Your December 1, 2023 request with the December 7, 2023 revisions is hereby deemed complete for a consistency review at the next Commission meeting of January 18, 2024, unless otherwise noticed. Your attendance at the meeting would be appreciated in case there are questions regarding this item. The meeting will be held at 4:00 p.m. at:

JWA/Airport Commission Room
3160 Airway Avenue
Costa Mesa, CA 92626

A copy of the meeting agenda and staff report regarding your item will be provided to you prior to the Commission meeting. You may contact us at (949) 252-5170 or at alucinfo@ocair.com if you need additional information regarding the submittal of this project.

Sincerely,

Julie Fitch
Staff Planner



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

January 5, 2024

Swati Meshram, PhD, AICP, Planning Manager
City of Buena Park Community Development
6650 Beach Blvd., P.O. Box 5009
Buena Park, CA 92622-5009

Re: ALUC Incomplete Submittal – City of Buena Park General Plan Amendment, Zone Change, Specific Plan Amendment and Objective Design and Development Standards (ODDS) to Implement the Housing Incentive Overlays (HIO) Programs 11, 12, and 16 for 2021-2029 Housing Element

Dear Dr. Meshram:

This is to confirm that Airport Land Use Commission (ALUC) staff has received your referral request for a consistency review of the subject items at the January 18, 2024, meeting. Your January 2, 2024 request, along with the additional information received January 3-5, for a review and consistency determination by the Commission is hereby deemed incomplete for the following reason:

- A separate submittal form and/or detailed project description for each item must be submitted. Please provide separate descriptions for General Plan Amendment, Zone Change, Specific Plan Amendment and Objective Design and Development Standards (ODDS), so that we may evaluate each of the items separately.

The AELUP states that complete submittals must be received by the first business day of the month, and the Commission requests that items be submitted between the Planning Commission and City Council public hearings (Section 4.8). Your initial submittal and additional information were received after the first day of the month, and the items are not scheduled for the City's Planning Commission until January 24, 2024, which is after the January ALUC meeting.

Please submit the information requested above so that it can be agendaized for the next Commission meeting of February 15, 2024. You may contact us at (949) 252-5170 or at alucinfo@ocair.com if you need additional information regarding the submittal of this project. Thank you.

Sincerely,

Julie Fitch
Staff Planner