

# **Attachment F**

Resolution No. 2024-53 Overruling ALUC

**RESOLUTION NO. 2024- 53**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, FINDING THE HOUSING ELEMENT IMPLEMENTATION AMENDMENTS CONSISTENT WITH THE PURPOSES OF THE STATE AERONAUTICS ACT AND OVERRIDING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY WITH THE 2008 JOHN WAYNE AIRPORT ENVIRONS LAND USE PLAN (PA2022-0245)**

**WHEREAS**, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

**WHEREAS**, California Government Code Section 65580 *et seq.* ("State Housing Element Law") requires each city and county adopt a housing element that identifies and analyzes existing and projected housing needs within their jurisdiction and prepare goals, policies, and programs, and quantified objectives to further the development, improvement, and preservation of housing;

**WHEREAS**, the City's General Plan Land Use Element is a mandatory element that governs the ultimate pattern of development and requires updating as necessary for consistency with other General Plan elements;

**WHEREAS**, every eight years, State Housing Element Law requires the City to update its General Plan Housing Element to identify and analyze existing and projected housing needs for the City along with a housing plan that provides adequate land use capacity to meet those needs;

**WHEREAS**, the City was assigned a Regional Housing Needs Assessment ("RHNA") allocation of 4,845 new units as its projected housing need for the planning period covering 2021-2029 and, as a result, the City worked diligently to prepare its 6<sup>th</sup> Cycle Housing Element in compliance with state law;

**WHEREAS**, preparation of the 6<sup>th</sup> Cycle Housing Element involved extensive public participation with community groups at numerous workshops, as well as meetings with the Planning Commission and City Council, and was assisted by an ad-hoc committee called the Housing Element Update Advisory Committee (“HEUAC”) formed and appointed by the City Council;

**WHEREAS**, after several meetings with the State Department of Housing and Community Development (“HCD”) and numerous drafts, the City Council adopted the final 6<sup>th</sup> Cycle Housing Element on September 13, 2022;

**WHEREAS**, HCD certified the City’s 6<sup>th</sup> Cycle Housing Element on October 5, 2022, as statutorily compliant with state law;

**WHEREAS**, Section 4 (Housing Plan) of the 6<sup>th</sup> Cycle Housing Element presents a framework and strategy for meeting the needs of existing and future resident populations in Newport Beach based on the RHNA allocation of 4,845 new housing units, the “fair share” of regional housing need and demand, by planning for units within the following site groupings or “focus areas” that are best suited for residential growth: Airport Area Environs, West Newport Mesa, Newport Center, Dover/Westcliff, and Coyote Canyon;

**WHEREAS**, the 6<sup>th</sup> Cycle Housing Element opportunity sites are to be rezoned per Housing Element Policy Actions 1A through 1F to accommodate the City’s RHNA obligation, including a buffer necessary to address future “no net loss” of available sites and to preclude the need to identify replacement sites during implementation.

**WHEREAS**, the rezoning includes the establishment of overlay zoning districts and accompanying development standards, as well as corresponding amendments to the General Plan Land Use Element and the Local Coastal Program;

**WHEREAS**, to comply with state law, the City has been working diligently to implement the 6<sup>th</sup> Cycle Housing Element no later than February 2025 (“6<sup>th</sup> Cycle Housing Element Implementation”), which requires the following amendments and actions:

- General Plan Amendment (“GPA”) - To revise the necessary goals and/or policies within the City’s Land Use Element to support housing production in the focus areas identified by the 6<sup>th</sup> Cycle Housing Element;

- Amendment to Title 20 (Planning and Zoning) (“ZCA”) - To implement the Land Use Element's policy changes by allowing housing development as an opportunity and establishing appropriate objective design and development standards for multi-unit residential and mixed-use development projects;
- Local Coastal Program Amendment (“LCPA”) - To revise and create new policies within the City’s Coastal Land Use Plan and update Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (“NBMC”) to support housing production in the focus areas identified by the 6<sup>th</sup> Cycle Housing Element that are within the Coastal Zone; and
- Program Environmental Impact Report (“PEIR”) (SCH No. 2023060699) - To analyze potential environmental impacts under the California Environmental Quality Act (“CEQA”) related to the 6<sup>th</sup> Cycle Housing Element Implementation, a Draft Housing Element Implementation Program Amendments Program Environmental Impact Report (“Draft PEIR”), to address reasonably foreseeable environmental impacts resulting from the 6<sup>th</sup> Cycle Housing Element Implementation;

**WHEREAS**, the 6<sup>th</sup> Cycle Housing Element Implementation must take effect by February 2025 to avoid significant penalties and loss of local control dictated by state law, which may include, but are not limited to:

- Increased exposure to public and private litigation;
- Loss of permitting authority;
- Financial penalties including monthly fines of up to \$600,000;
- Loss of eligibility for state and regional funding sources;
- Court receivership;
- Allowing housing development projects to bypass the City’s zoning requirements; and
- Increased exposure to monitoring by the newly formed Housing Accountability Unit of HCD;

**WHEREAS**, City staff worked closely with the community through the City Council-appointed General Plan Advisory Committee (“GPAC”) and General Plan Update Steering Committee (“GPUSC”) from March 2023 to August 2023 to draft Land Use Element goals and policies that support 6<sup>th</sup> Cycle Housing Element Implementation;

**WHEREAS**, the draft GPA that was supported by the GPAC and the GPUSC was posted online on August 30, 2023, with additional public comment and participation at the Planning Commission Study Session on September 21, 2023, and City Council Study Session on February 13, 2024;

**WHEREAS**, the draft GPA was revised and reposted online on January 16, 2024, and March 28, 2024, based on the public’s input;

**WHEREAS**, a public hearing was held by the Planning Commission on April 18, 2024, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California to consider the actions and amendments required for the 6<sup>th</sup> Cycle Housing Element Implementation. A notice of time, place, and purpose of the hearing was given in accordance with Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”), Chapter 20.62 (Public Hearings) and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by the Planning Commission at this hearing;

**WHEREAS**, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2024-006 by a unanimous vote (5 ayes, 2 recusals) recommending the City Council certify the Housing Element Implementation Program Amendments Draft PEIR and approve the 6<sup>th</sup> Cycle Housing Element Implementation;

**WHEREAS**, California Public Utilities Code (“CPUC”) Section 21676(b) requires the City to refer the 6<sup>th</sup> Cycle Housing Element Implementation to the Orange County Airport Land Use Commission (“ALUC”) to review for consistency with the 2008 John Wayne Airport Environs Land Use Plan (“AELUP”);

**WHEREAS**, on May 16, 2024, the ALUC determined the 6<sup>th</sup> Cycle Housing Element Implementation is inconsistent with portions of the AELUP, as provided in ALUC’s determination attached as Exhibit “A,” and incorporated herein by reference;

**WHEREAS**, pursuant to Sections 21670 and 21676 of the CPUC, the City Council may, after a public hearing, propose to overrule ALUC with a two-thirds vote, if it makes specific findings that the Project is consistent with the purpose of Section 21670 of the CPUC to protect the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses;

**WHEREAS**, a public hearing was held by the City Council on May 28, 2024, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with CPUC Section 21676(b) and the Ralph M. Brown Act. Evidence both written and oral, was presented to, and considered by, the City Council at this hearing;

**WHEREAS**, at the conclusion of this hearing, the City Council adopted Resolution No. 2024-32 by a unanimous vote (7 ayes, 0 nays) to notify the ALUC and State Department of Transportation Aeronautics Program ("Aeronautics Program") of the City's intent to override ALUC's inconsistency finding;

**WHEREAS**, notice of the City's intent to override the ALUC inconsistency determination, along with Resolution No. 2024-32 was sent via certified mail and emailed to the ALUC and the Aeronautics Program on May 29, 2024;

**WHEREAS**, the City received two comments in response to the notice of the City's intent to override the ALUC inconsistency determination from the Aeronautics Program and ALUC in accordance with CPUC Section 21676, which are attached hereto as Exhibits "B" and "C" respectively, and incorporated herein by reference; and

**WHEREAS**, a public hearing was held on July 23, 2024, by the City Council in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California to consider the 6<sup>th</sup> Cycle Housing Element Implementation, including consideration of certifying the PEIR, adoption of CEQA Findings, Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations. A notice of time, place, and purpose of the hearing was given in accordance with CPUC Section 21676(b), the Ralph M. Brown Act, Chapter 20.62 (Public Hearings), Chapter 20.66 (Amendments), and Chapter 21.62 (Public Hearings) of the NBMC, and City Council Policy K-1 (General Plan and Local Coastal Program) and City Council Policy K-3 (Implementation procedures for the California Environmental Quality Act). Evidence both written and oral, was presented to, and considered by, the City Council at this hearing.

**NOW, THEREFORE,** the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council has evaluated the comments provided as Exhibits “B” and “C” from the reviewing agencies, and does hereby make the findings necessary to override the ALUC’s determination attached hereto as Exhibit “D,” and incorporated herein by reference.

**Section 2:** The Housing Element Implementation Program Amendments Final PEIR (SCH No. 2023060699) was prepared for the 6<sup>th</sup> Cycle Housing Element Implementation (also referred to as the “Project”) in compliance with the California Environmental Quality Act (“CEQA”) as set forth in the Public Resources Code Section 21000 *et seq.*, Title 14, Division 6, Chapter 3 of the California Code of Regulations (“CEQA Guidelines”), and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act). On July 23, 2024, the City Council adopted Resolution No. 2024-\_\_\_\_, to certify the PEIR as complete and adequate, inclusive of all required findings, a statement of overriding considerations, and a mitigation monitoring reporting program. The City Council hereby finds that the action to adopt this Resolution approving the GPA was considered within the PEIR. Resolution No. 2024-\_\_\_\_ is hereby incorporated by reference.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 4:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 23rd day of July, 2024.

\_\_\_\_\_  
Will O'Neill  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE



\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment(s): Exhibit "A" – Orange County Airport Land Use Commission Inconsistency Determination dated May 23, 2024  
Exhibit "B" – Comment Letter from California Department of Transportation Aeronautics Program dated June 21, 2024  
Exhibit "C" – Comment Letter from Orange County Airport Land Use Commission dated June 28, 2024  
Exhibit "D" – Findings to Override ALUC's Determination



**EXHIBIT "A"**  
**Orange County Airport Land Use Commission**  
**Inconsistency Determination dated May 23, 2024**



**AIRPORT LAND USE COMMISSION**

FOR ORANGE COUNTY

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

May 23, 2024

Ben Zdeba, Principal Planner  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

Subject: ALUC Determination for Housing Element Implementation Program Amendments (Proposed Amendments to the General Plan Land Use Element, Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC), and Local Coastal Program

Dear Mr. Zdeba:

During the public meeting held on May 16, 2024, the Airport Land Use Commission (ALUC) for Orange County considered the subject item. The matter was duly discussed, and with a 7-0 vote, the Commission found the Housing Element Implementation Program Amendments (Proposed Amendments to the General Plan Land Use Element, Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC), and Local Coastal Program to be Inconsistent with the *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)* per:

1. Section 2.1.1 Aircraft Noise that the "aircraft noise emanating from airports may be incompatible with general welfare of the inhabitants within the vicinity of an airport."
2. Section 2.1.2 Safety Compatibility Zones in which "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."
3. Section 2.1.4, and PUC Section 21674 which state that the Commission is charged by PUC Section 21674(a) "to assist local agencies in ensuring compatible land uses in the vicinity of ...existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses," and PUC Section 21674(b) "to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety and welfare."
4. 3.2.1 General Policy of the *AELUP* which states that the General Land Use policy of the Airport Land Use Commission for Orange County shall be "Within the boundaries of the *AELUP*, any land use may be found to be Inconsistent with the *AELUP* which... places people so that they are affected adversely by aircraft noise..."

Please contact me if you have any questions regarding this proceeding. Thank you.

Sincerely,



Julie Fitch  
Interim Executive Officer

cc: ALUC

**EXHIBIT "B"**  
**Comment Letter from California Department of Transportation**  
**Aeronautics Program dated June 21, 2024**

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

**California Department of Transportation**

AERONAUTICS PROGRAM  
DIVISION OF TRANSPORTATION PLANNING  
P.O. BOX 942873, MS-40 | SACRAMENTO, CA 94273-0001  
(916) 654-4959  
[www.dot.ca.gov](http://www.dot.ca.gov)



June 21, 2024

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](mailto:bzdeba@newportbeachca.gov)>

Dear Mr. Zdeba:

The Aeronautics Program (Program) at the California Department of Transportation (Caltrans) thanks the City of Newport Beach (City) for providing the Notice of Intent, dated May 29, 2024, to overrule a determination of the Orange County Airport Land Use Commission (ALUC). The ALUC has reported that the Housing Element Implementation Program Amendments 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.) 2024-32 (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. The Program supports the position of the ALUC in noting that the City has provided insufficient support for an Overrule.

The ALUC has noted the following reasons this Project update is incompatible with the AELUP:

1. Section 2.1.1, Aircraft Noise that the "aircraft noise emanating from airports may be incompatible with general welfare of the inhabitants within the vicinity of an airport."
2. Section 2.1.2, Safety Compatibility Zones in which "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."
3. Section 2.1.4, and PUC Section 21674 which state that the Commission is charged by PUC Section 21674(a) "to assist local agencies in ensuring compatible land uses in the vicinity of ... existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses," and PUC Section 21674(b) "to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety and welfare."
4. Section 3.2.1, General Policy of the AELUP which states that the General Land Use policy of the Airport Land Use Commission for Orange County shall be "Within the

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

Ben Zdeba, Principal Planner  
June 21, 2024  
Page 2

boundaries of the AELUP, any land use may be found to be Inconsistent with the AELUP which ... places people so that they are affected adversely by aircraft noise..."

The Program notes that the intent of the Handbook guidance aims to ensure the safety of both the aviation community and the community members surrounding an airport. Within this framework, the ALUC has determined that the City has inadequately addressed the safety concerns related to the proposed significant increase of housing density within airport safety zones.

The Project also proposes to raise the allowed height of structures in close proximity to JWA. The Program emphasizes that many, if not all, of the proposed height increases will require a Federal Aviation Administration (FAA) obstruction analysis to ensure that structures will not penetrate Federal Aviation Regulation (FAR) Part 77 surfaces, or the evaluation may specify obstruction mitigation.

Lastly, the Program notes that many proposed housing sites are within the 65 CNEL noise contour. The Program strongly recommends that the Lead Agency or authority having jurisdiction require developers to adequately design structures to ensure interior noise levels below 45 dB and to hold final permitting until the developer can demonstrate adequate interior noise attenuation.

The Program concurs with the ALUC's determination that the Housing Element Implementation Program Amendments Project is inconsistent with the Airport Environs Land Use Plan for John Wayne Airport. This conclusion is based on insufficient findings by the City and the safety concerns for public health and welfare posed by allowing housing in incompatible safety zones and noise contours.

In addition, Section 21675.1(f) provides: If a city or county overrules the commission pursuant to subdivision(d) with respect to a publicly owned airport that the city or county does not operate, the operator of the airport is not liable for damages to property or personal injury resulting from the city's or county's decision to proceed with the action, regulation, or permit.

Please note: The Program comments are to be included in the public record of any decision to overrule the ALUC. If you have questions or if we may be of further assistance, please contact me by email at [jonathan.huff@dot.ca.gov](mailto:jonathan.huff@dot.ca.gov) or call (916) 879-6528.

Sincerely,

Originally signed by

Jonathan Huff  
Associate Transportation Planner  
Caltrans Aeronautics

c: Lea U. Choum, Executive Officer, Orange County Airport Land Use Commission  
<[ALUCinfo@ocair.com](mailto:ALUCinfo@ocair.com)>; Matthew Friedman, Chief of Aviation Planning, Caltrans Aeronautics  
<[matthew.friedman@dot.ca.gov](mailto:matthew.friedman@dot.ca.gov)>

bc: Lan Zhou, Deputy District Director, District 12; <[lan.zhou@dot.ca.gov](mailto:lan.zhou@dot.ca.gov)>

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

**EXHIBIT "C"**  
**Comment Letter from Orange County Airport Land Use Commission**  
**dated June 28, 2024**

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**AIRPORT LAND USE COMMISSION**  
**FOR ORANGE COUNTY**  
3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

June 28, 2024

Ben Zdeba, AICP, Principal Planner  
City of Newport Beach  
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 Program Amendments

Dear Mr. Zdeba,

We are in receipt of the City of Newport Beach (City) letter dated May 29, 2024, and City Council Resolution No. 2024-32 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 Program Amendments including proposed amendments to the General Plan Land Use Element, Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC), and Local Coastal Program. 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 City submitted Housing Element Implementation - Noise Related Amendments for a consistency review. The proposed amendments included amendments to the General Plan including the replacement of the *AELUP* noise contours with more narrow noise contours which were included in 2014 Settlement Agreement EIR 617. ALUC found the Noise-Related Amendments to be inconsistent with the *AELUP for JWA*, and the City overruled that determination and adopted the Amendments.

On May 16, 2024, the ALUC for Orange County found the proposed Housing Element Implementation Program Amendments to be inconsistent with the *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)* on a 7-0 vote. The inconsistent finding was based on *AELUP* Sections 2.1.1, 2.1.2, 2.1.4, and 3.2.1. 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 amendments allowing for residential uses 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. 2024-32:

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*. The proposed Housing Element Implementation Program Amendments would further allow residential uses within the JWA 65 dBA and 60 dBA CNEL noise contours. The ALUC believes that these 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), regardless of which noise contours are utilized.

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 housing sites in the Housing Element Update, the Noise-Related Amendments, and the Housing Element Implementation Program 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. Considering the proposed densities, proximity to JWA and the number of flights over the property, Housing Element Implementation Program Amendments are 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 Program 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,

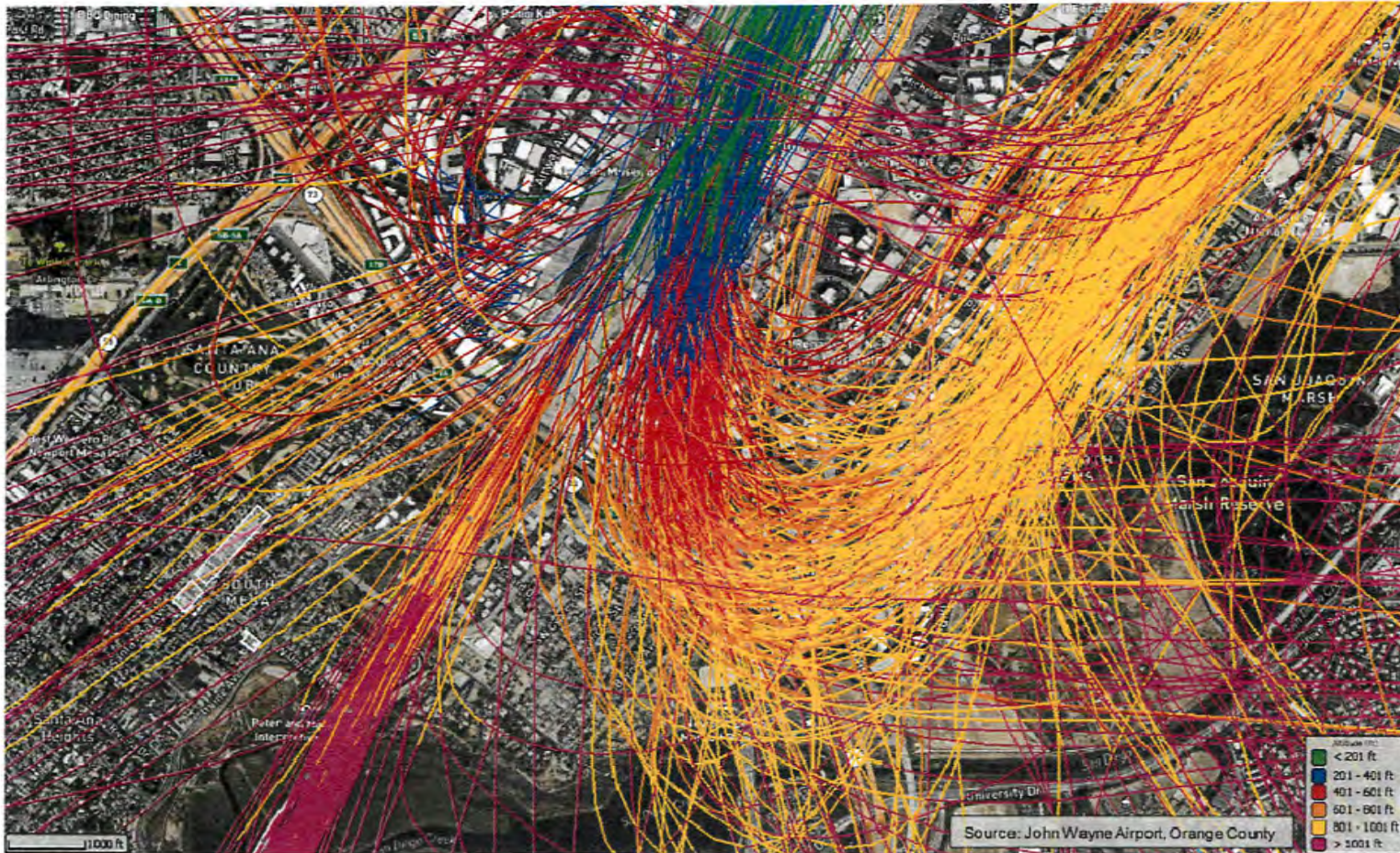
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84DEC9F4FAB84DE  
Gerald A. Bresnahan  
Chairman

Attachment: John Wayne Airport Flight Tracks

cc: Members of Airport Land Use Commission for Orange County  
Johnathan Huff, Caltrans/Division of Aeronautics



John Wayne Airport Altitude Analysis  
629 Operations  
Tuesday, April 2, 2024

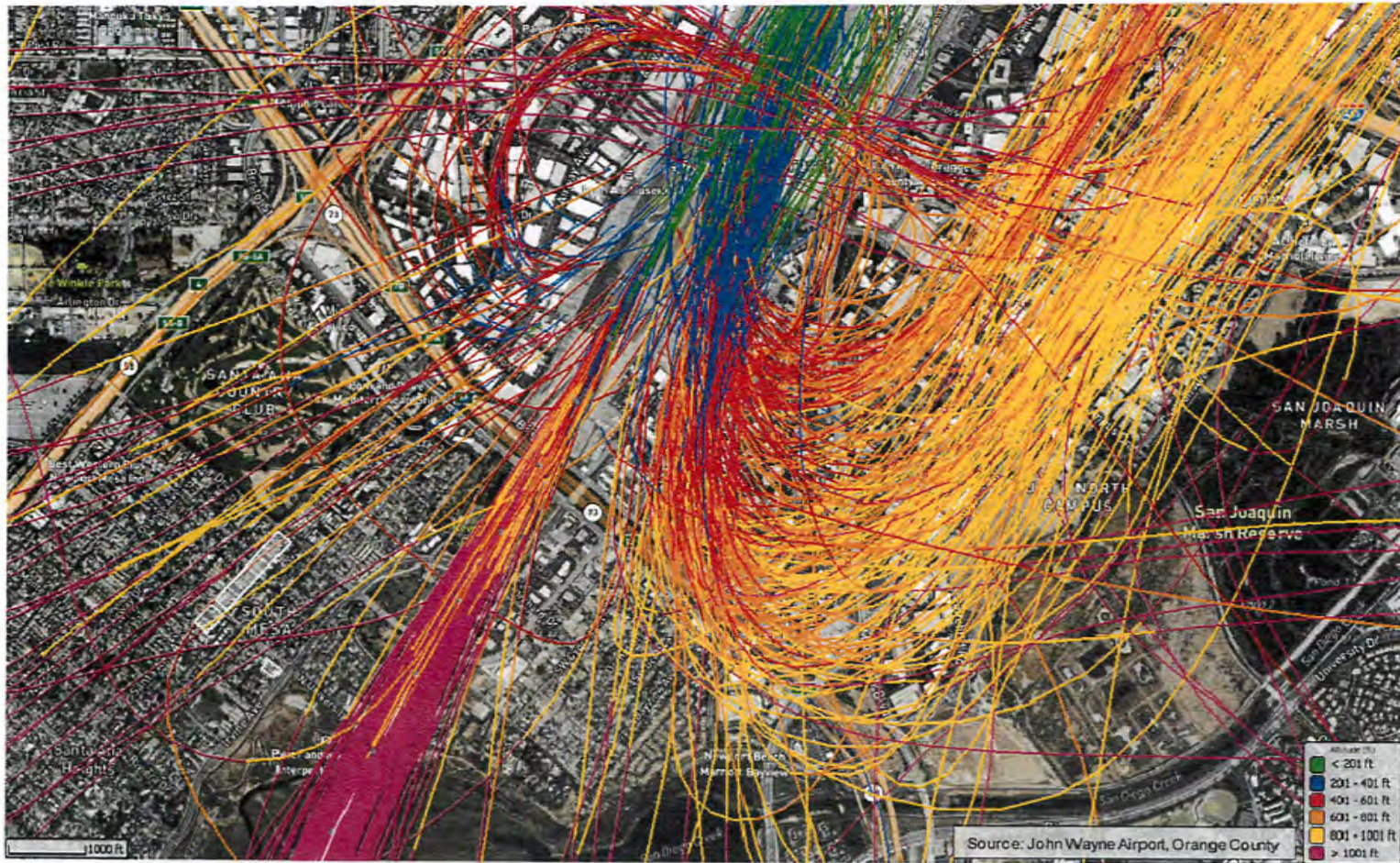


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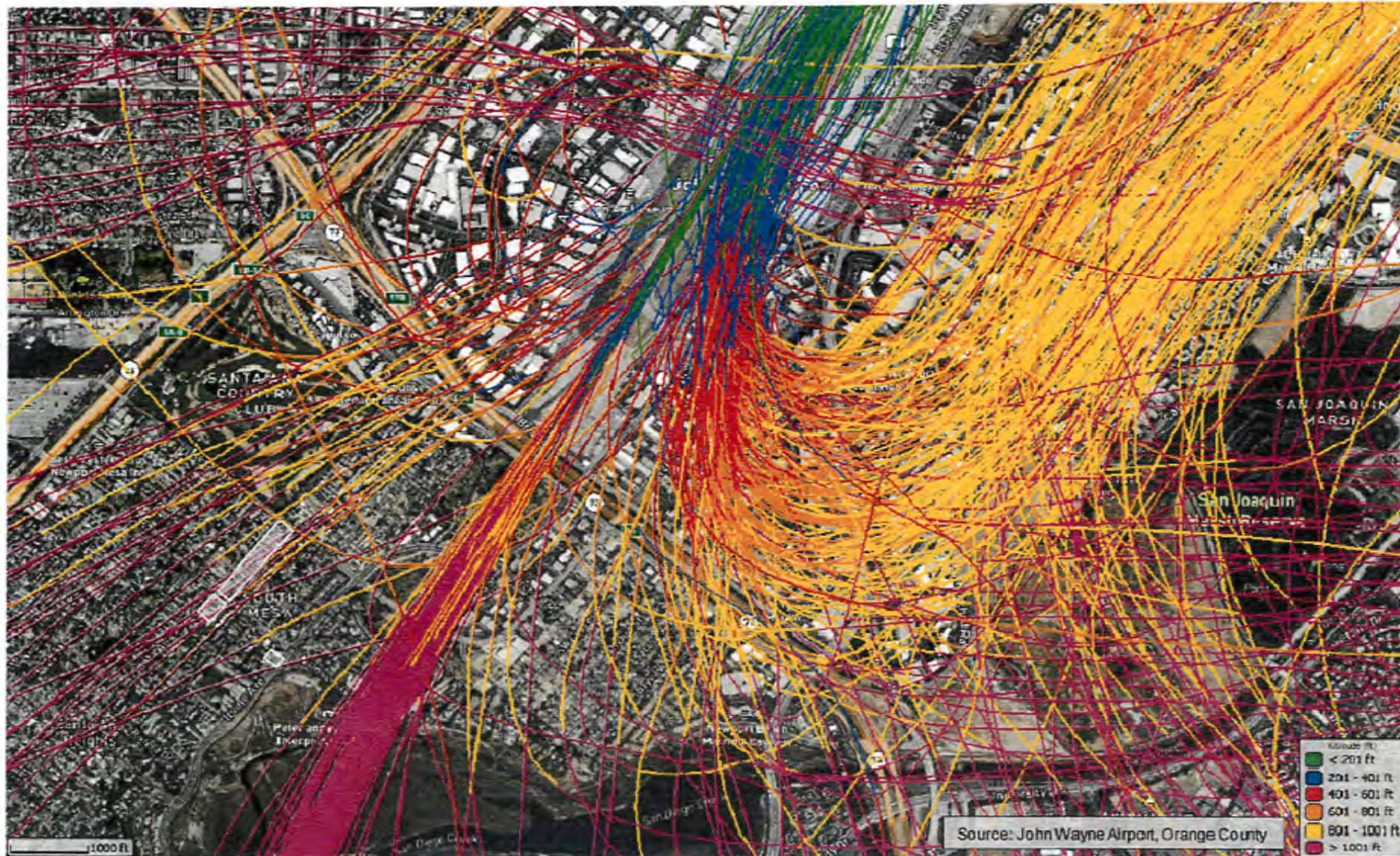
John Wayne Airport Altitude Analysis  
589 Operations  
Thursday, April 4, 2024



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John Wayne Airport Altitude Analysis  
561 Operations  
Saturday, April 6, 2024



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**EXHIBIT “D”**  
**Findings to Override ALUC’s Determination**

The City Council does hereby find that the 6<sup>th</sup> Cycle Housing Element Implementation is consistent with the purposes of Section 21670 of the CPUC and the AELUP of protecting the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

Findings and Facts in Support of Findings:

- A. *The 6th Cycle Housing Element Implementation is consistent with the noise standards of the AELUP.*

The AELUP guides development proposals to provide for the orderly development of John Wayne Airport and the surrounding area through implementation of the standards in Section 2 (Planning Guidelines) and Section 3 (Land Use Policies) of the AELUP. Implementation of these standards are intended to protect the public from the adverse effects of aircraft noise, ensure that people and facilities are not concentrated in areas susceptible to aircraft accidents, and ensure that no structures or activities adversely affect navigable airspace.

Section 2.1.1 of the AELUP sets forth the CNEL standards. A total of 75 new housing opportunity sites are identified in the Airport Area. Of those sites, 56 are located wholly or partially outside the updated 65 dBA CNEL contour boundary as identified by the 2014 John Wayne Airport Settlement Agreement Environmental Impact Report (EIR No. 617). Only 19 new housing opportunity sites are located wholly within the updated 65 dBA CNEL contour boundary. As proposed, residential development would be limited to parcels wholly or partially outside the updated 65 dBA CNEL noise contour, unless and until the City determines, based on substantial evidence, that the sites wholly within such contour area are needed for the City to satisfy its 6<sup>th</sup> Cycle Housing Element RHNA mandate.

Sections 3.2.3 and 3.2.4 of the AELUP define the noise exposure in the 60 dBA to 65 dBA CNEL noise contour (Noise Impact Zone 2) as “Moderate Noise Impact” and in the 65 dBA to 70 dBA CNEL noise contour (Noise Impact Zone 1) as “High Impact.” Section 3, Table 1 (Limitations on Land Use Due to Noise) of the AELUP identifies residential uses as “conditionally consistent” in the 65 dBA CNEL noise contour and “normally inconsistent” in the 70 dBA CNEL noise contour. However, residential uses are not outright prohibited. Instead, Section 3.2.3 of the AELUP

requires residential uses be developed with advanced insulation systems to bring the sound attenuation to no more than 45 dB inside. In addition, residential uses within the 65 dBA CNEL noise contour area are required to be “indoor-oriented” to preclude noise impingement on outdoor living areas. This is further substantiated and supported by the proposed specific development standards for the Airport Area Environs Area (HO-1), which include enhanced sound mitigation and the allowance of interior amenities that satisfy open space requirements.

The existing CNEL noise contours of the AELUP Master Plan date back to 1985 (“1985 AELUP Master Plan”). However, advances in technology warrant an adjustment to the noise contours. Specifically, the Noise Chapter of EIR No. 617, for the 2014 John Wayne Airport Settlement Agreement Amendment, described how the dBA CNEL noise contours have decreased in size compared to the 1985 AELUP Master Plan CNEL noise contours. The 1985 AELUP Master Plan CNEL noise contours are considerably larger than the existing noise contours presented in the 2014 John Wayne Airport Settlement Agreement Amendment largely due to a quieter fleet of existing commercial aircraft and a dramatic reduction in the number of general aviation operations. The noise contours in EIR No. 617 are based on more contemporary noise modeling programs, as EIR No. 617 explained that “one of the most important factors in generating accurate noise contours is the collection of accurate operational data.” Airport noise contours generated in the Noise Study for EIR No. 617 used the Integrated Noise Model (“INM”) Version 7.0d which was released for use in May 2013, and is the state-of-art in airport noise modeling.

The 6<sup>th</sup> Cycle Housing Element Implementation is required to ensure the continued and effective implementation of the 6<sup>th</sup> Cycle Housing Element programs including, but not limited to, the provision of sufficient adequately zoned land to accommodate the City’s share of the regional growth and its required share of lower income dwelling units consistent with the RHNA required of the City under State Law. Additionally, by providing uniform and concise conditions of approval identified in the proposed amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC, the City has taken actions to address potential environmental constraints in the Airport Area and ensure continued feasibility of sites, to meet its RHNA obligation.

- B. *The proposed 6th Cycle Housing Element Implementation is consistent with the safety standards of the AELUP.*

Section 2.1.2 (Safety Compatibility Zones) of the AELUP sets forth zones depicting which land uses are acceptable in various portions of JWA environs. Most of the housing opportunity sites, except for portions of six properties, are all within Safety Zone 6. Allowed uses in Safety Zone 6 include residential and most nonresidential uses, except outdoor stadiums and similar uses with very high intensities. Uses that should be avoided include children's schools, large day-care centers, hospitals, and nursing homes. Risk factors associated with Safety Zone 6 generally include a low likelihood of accident occurrence. The Newport Beach Golf Course and the Young Men's Christian Association properties are included as housing opportunity sites in the 6<sup>th</sup> Cycle Housing Element. Portions of those properties are within Safety Zone 4 with the remaining portions lying in Safety Zone 6. Safety Zone 4 limits residential uses to very low density (if not deemed unacceptable because of noise) and advises to avoid nonresidential uses having moderate or higher usage intensities. Three small properties along Bristol Street and Zenith Avenue have also been included at the request of the property ownership. Two of these properties are wholly within Safety Zone 3 with the remainder being bisected by both Safety Zones 3 and 6. Safety Zone 3 limits residential uses to very low densities (if not deemed unacceptable due to noise). Given the smaller size of these properties and intervening nonconforming single-unit residential development, a very low-density project is most likely to occur at these sites.

The City's General Plan Safety Element Policy S8.6 demonstrates that the City acknowledges the importance of the JWA Safety Zones:

"S8.6 John Wayne Airport Traffic Pattern Zone - Use the most currently available John Wayne Airport (JWA) Airport Environs Land Use Plan (AELUP) as a planning resource for evaluation of land use compatibility and land use intensity in areas affected by JWA operations. In particular, future land use decisions within the existing JWA Clear Zone/Runway Protection Zone (Figure S5) should be evaluated to minimize the risk to life and property associated with aircraft operations."

In accordance with Policy S8.6, the 6<sup>th</sup> Cycle Housing Element Implementation does not include any housing opportunity sites in the JWA Clear Zone/Runway Protection Zone. Compliance with these policies and regulations will ensure that

future development within the JWA Airport Planning Area will follow the safety standards of the AELUP.

- C. *The 6<sup>th</sup> Cycle Housing Element Implementation is consistent with the purpose and intent of the AELUP and will not result in incompatible land uses adjacent to JWA.*

The standards and policies set forth in AELUP Sections 2 and 3 were adopted to prevent the creation of new noise and safety problems. As set forth above, any development on the proposed housing opportunity sites will comply with the noise criteria and safety standards established in Sections 2 and 3, consistent with policies contained in the amendments to General Plan Land Use Element, Coastal Land Use Plan, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC, including the enhanced development standards related to noise mitigation and air quality. It is also important to emphasize that parcels bisected by the 65 dBA CNEL noise contour of the updated Noise Element could support future housing; whereas parcels located wholly within the 65 dBA CNEL noise contour could support housing, if deemed necessary to satisfy the RHNA mandate. Lastly, compliance with the AELUP and City standards will be also evaluated and demonstrated at the time development projects are proposed in the future.