

RESOLUTION NO. 2021-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA OVERRULING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT THE PROPOSED GENERAL PLAN UPDATE IS INCONSISTENT WITH THE AIRPORT ENVIRONS LAND USE PLAN FOR JOHN WAYNE AIRPORT, INCLUDING SUPPORTIVE FINDINGS

WHEREAS, Article 5 of Chapter 3 of Division 1 of Title 7 (commencing with Section 65300) of the Government Code requires the City to prepare and adopt a comprehensive, long-term general plan for the physical development of the City; and

WHEREAS, the City of Santa Ana now seeks to adopt a comprehensive update to the Santa Ana General Plan; and

WHEREAS, the General Plan Update ("project") also requires the certification of the Final Recirculated Program Environmental Impact Report and related documents that have been completed for the project, which approval will be concurrent with the approval of the General Plan Update; and

WHEREAS, the project as currently proposed entails, among other things, (1) the revision to the State mandated Elements of the General Plan; (2) the inclusion of optional Elements to the General Plan; and (3) approval of General Plan Amendment (GPA) No. 2020-06, which would result in a comprehensive update to the existing General Plan; and

WHEREAS, the City of Santa Ana is also located partially within the area contained within the scope of the Airport Environs Land Use Plan for John Wayne Airport ("AELUP"); and

WHEREAS, California Public Utilities Code section 21676(b) requires the City to refer projects requiring a general plan amendment or a zone change to the Airport Land Use Commission for Orange County ("ALUC") for consistency with the AELUP; and

WHEREAS, the City submitted the General Plan Update to the ALUC for consistency review on September 17, 2020; and

WHEREAS, on October 15, 2020, the ALUC, by vote of 5-0, found the General Plan Update to be inconsistent with the Airport Environs Land Use Plan for John Wayne Airport pursuant to AELUP sections 1.2, 2.1.4, and 3.2.1, and Public Utilities Code section 21674, due to (1) proffered aircraft noise and safety issues relative to the allowed placement of residential units within the flight corridor in the 55 Freeway/Dyer Road Focus Area and (2) proffered building height issues in a portion of the South Bristol Street Focus Area (between MacArthur Boulevard and Sunflower Avenue); and

WHEREAS, pursuant to Public Utilities Code section 21676(b), the City may overrule the ALUC by a two-thirds vote of the City Council if it makes specific findings that the project is consistent with the purpose of the State Aeronautics Act; and

WHEREAS, pursuant to Public Utilities Code section 21676(b), on October 16, 2020, with the requisite 45-day notice, the Santa Ana City Council adopted a resolution of intent to overrule the determination of inconsistency by the ALUC, Resolution No. 2020-078, and provided the ALUC with notice thereof, including proposed findings; and

WHEREAS, by letter dated November 12, 2020, and in accordance with Public Utilities Code section 21676, the ALUC submitted written comments to the City addressing the City's proposed overruling; and

WHEREAS, on November 9, 2020, the Planning Commission conducted a duly noticed public hearing to consider the Final Program Environmental Report and General Plan Update, at which the Planning Commission voted not to certify the Final PEIR and continue work on the General Plan Update to a future date to allow additional time for outreach to Santa Ana's environmental justice communities and in view of the COVID-19 pandemic; and

WHEREAS, the Santa Ana General Plan Update subsequently underwent revisions that were not materially different from what was originally submitted to the ALUC for review, leaving the Land Use Element unchanged, nor were any new elements added that include changes within the JWA Planning area; and

WHEREAS, the written comments received from the ALUC have been included in the public record as required by Public Utilities Code section 21676; and

WHEREAS, in 2021, a Recirculated Draft Program Environmental Impact Report was prepared and circulated in accordance with all legal requisites, as a supplemental analysis to the original Draft PEIR to reflect the updates to the project and based on an intensive, extended community outreach program conducted by the City between January and May 2021; and

WHEREAS, on November 8, 2021, the Planning Commission conducted a duly noticed public hearing to consider the Final Recirculated PEIR and General Plan Update. After hearing all relevant testimony from staff, the public, and the City's consultant team, the Planning Commission voted to recommend that the City Council certify the Final Recirculated PEIR, adopt the findings of fact, the statement of overriding considerations, and the mitigation monitoring and reporting program, and approve the project; and

WHEREAS, on December 7, 2021, the City Council conducted a duly noticed public hearing to consider the Final Recirculated PEIR, General Plan Update, and the proposed overruling of the determination of inconsistency by the ALUC, at which hearing members of the public were afforded an opportunity to comment and the project was fully considered.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Ana as follows:

Section 1. The City of Santa Ana is required to provide findings of fact supporting the overrule of the ALUC's determination of inconsistency as required by Public Utilities Code section 21676(b). Those findings are attached as Exhibit A and incorporated here by reference as if set forth in full.

Section 2. Based on these findings of fact and the associated substantial evidence in the public record, the City Council finds that the proposed action by the City on the General Plan Update is consistent with the purposes of the State Aeronautics Act as stated in PUC Section 21670 and consistent with the AELUP.

Section 3. Based on the above evidence and findings made, and the remainder of the record in this matter, the City Council of the City of Santa Ana hereby overrules the Orange County ALUC's determination that the General Plan Update is inconsistent with Airport Environs Land Use Plan for John Wayne Airport.

Section 4. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this ____ day of _____, 2021.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATION OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2021-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on _____.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT A

FINDINGS OF FACT

SUBJECT: CITY OF SANTA ANA NOTICE OF INTENT TO OVERRULE THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY FOR THE CITY OF SANTA ANA COMPREHENSIVE GENERAL PLAN UPDATE, GOLDEN CITY BEYOND (2045)

I. INTRODUCTION

The City of Santa Ana ("City") is required to provide findings supporting the overrule of the Orange County Airport Land Use Commission's ("ALUC") determination of inconsistency 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 General Plan Update, Golden City Beyond (2045) ("Project") is consistent with the purposes of the State Aeronautics Act as stated in PUC Section 21670, which provides, in relevant part:

"It is the purpose of this article to protect 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."

Specifically, the City's proposed action on the 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.

II. FRAMEWORK

It is in the public interest to: (1) provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to (2) promote the overall goals and objectives of the California airport noise standards adopted pursuant to PUC Section 21669 and to (3) prevent the creation of new noise and safety problems.

- A. To provide for the orderly development of JWA and the area surrounding the airport, the ALUC adopted the 2008 Airport Environs Land Use Plan for John Wayne Airport ("JWA AELUP") on April 17, 2008. The JWA 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).
- B. The ALUC also adopted a separate Airport Environs Land Use Plan for Heliports ("Heliports AELUP") on June 19, 2008.

- C. 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. Neither the JWA AELUP nor the Heliports AELUP have been updated to incorporate the Handbook’s guidance. Likewise, the JWA AELUP has not been updated with 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”).
- D. On September 17, 2020, the City of Santa Ana presented the Project to the ALUC for a determination of consistency with the JWA AELUP and Heliports AELUP.
- E. The ALUC staff report dated October 15, 2020 (“Staff Report”) recommends that the ALUC find the Project inconsistent with the JWA AELUP per Sections 1.2, 2.4.1, and 3.2.1 of the JWA AELUP, and per PUC Section 21674, due to 1) proffered aircraft “noise and safety issues” relative to the allowed placement of residential units “within the flight corridor” in the 55 Freeway/Dyer Road Focus Area; and 2) proffered building height issues in a portion of the South Bristol Street Focus Area (between MacArthur Boulevard and Sunflower Avenue).
- F. The ALUC Staff Report recommends that the ALUC find the Project consistent with the Heliports AELUP, with the condition that the City include a statement in the General Plan Update (Safety Element Policy S-4.4) that any proposals for heliports/helipads within the City be submitted through the City to ALUC for a consistency determination.
- G. On October 15, 2020, the ALUC held a public hearing and adopted a resolution finding the Project inconsistent with the JWA AELUP for the stated reasons set forth in the Staff Report, and further finding the Project consistent with the Heliports AELUP on the condition set forth in the Staff Report.
- H. 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 §§ 21670, 21676) and the ALUC process (JWA AELUP § 4.11) allowing for overrule of an ALUC finding of inconsistency.
- I. 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, as stated in PUC Section 21670.
- J. The City finds that the Project is consistent with the JWA AELUP and with the purposes of the State Aeronautics Act based on the following Findings of Fact and substantial evidence.

III. FINDINGS OF FACT

- A. **General Plan Update.** The Project encompasses the entire City of Santa Ana. The General Plan Update set forth in the Project will change zoning and land use within five (5) geographic Focus Areas within the City. The comments in ALUC’s Staff Report and ALUC’s determination of inconsistency refer only to changes in land use within these five (5) Focus Areas.
 - 1. The vast majority of the Project falls outside of the JWA AELUP planning area, which is defined in Section 1.7 of the JWA AELUP as “the furthest extent of the 60 CNEL

Contour, the FAR Part 77 Notification Surface and the runway safety zones associated with the airport.”

2. Both the Grand Ave/17th Street Focus Area and the West Santa Ana Boulevard Focus Area fall completely outside of the JWA AELUP planning area.
3. The 55 Freeway/Dyer Road Focus Area and South Bristol Focus Area are both located entirely within the JWA AELUP planning area.
4. The South Main Focus Area is located partially within the JWA AELUP planning area.

B. Justification for Finding Project Consistent with the Purposes of PUC Section 21670.

1. **Noise.** The residential and commercial land uses under the proposed Project are consistent with the aircraft noise standards of the JWA AELUP and the requirements of PUC Section 21670.
 - a. The majority of the Project falls outside of the 60 dBA CNEL aircraft noise contour (Exhibit 2).
 - (1) Per the JWA AELUP, all land uses are normally consistent within the 60 dBA CNEL aircraft noise contour using conventional construction methods. No special noise reduction methods are required. See JWA AELUP at 23, Table 1.
 - b. The vast majority of the Project is located outside of the JWA 65 dBA CNEL aircraft noise contour.
 - (1) Per the JWA AELUP, commercial (e.g. retail and office), community facilities (e.g. churches, libraries, schools, preschools, day-care centers, hospitals, nursing/convalescent homes, & other noise sensitive uses), and industrial uses are all normally consistent within the 65 dBA CNEL aircraft noise contour. See JWA AELUP at 23, Table 1.
 - (2) Per the JWA AELUP, single and multifamily residential uses are conditionally consistent within the 65 dBA CNEL aircraft noise contour.
 - c. Of the five (5) Focus Areas that will include a change in zoning and land use designation under the Project, only the 55 Freeway/Dyer Road Focus Area lies partially within the 65 dBA CNEL aircraft noise contour.
 - d. The General Plan Update states, as Policy N-1.3, that it shall be City policy to “[c]ollaborate with local and regional transit agencies and other jurisdictions to minimize regional traffic noise and other sources of noise in the City.”
 - e. Consistent with the JWA AELUP, the General Plan Update states, as Policy N-3.3, that it shall be City policy to “[r]equire all residential land uses in 60 dB(A) CNEL or 65 dB(A) CNEL Noise Contours to be sufficiently mitigated so as not to exceed an interior standard of 45 Db(A) CNEL.”
 - f. Based on the foregoing, the Project will not result in the exposure of City residents to excess noise within the meaning of PUC Section 21670.

2. **Safety.** The residential and commercial land uses under the proposed project are consistent with the safety standards of the JWA AELUP.
- a. Section 2.1.2 of the JWA AELUP describes the airport's safety compatibility zones.
 - (1) Per Section 2.1.2 of the JWA AELUP, "Safety and compatibility zones depict which land uses are acceptable and which are unacceptable in various portions of airport environs."
 - (2) The purpose of these zones, per the JWA AELUP, 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."
 - b. The JWA AELUP identifies the following Safety Zones:
 - (1) Zone 1: Runway Protection Zone
 - (2) Zone 2: Inner Approach/Departure
 - (3) Zone 3: Inner Turning Zone
 - (4) Zone 4: Outer Approach/Departure Zone
 - (5) Zone 5: Sideline Zone
 - (6) Zone 6: Traffic Pattern Zone
 - c. The Project is not in the JWA runway protection zones (RPZ).
 - d. None of the Project Focus Areas are in any of the JWA AELUP safety zones. JWA AELUP Safety Zone 6 overlays a small portion of the City south of MacArthur Boulevard, however the Project does not propose any change in land use or zoning in this area.
 - e. The ALUC Staff Report states that "The proposed changes in Land Use in the 55/Dyer Focus Area would result in 9,952 total residential units within the flight corridor for John Wayne Airport subjecting future residents to noise and safety issues."
 - (1) As noted above and in Section 2.1.2 and Appendix D of the JWA AELUP, the "flight corridor for John Wayne Airport" is not an identified Safety Zone for JWA. Nor is a "flight corridor" a defined, restrictive term in the JWA AELUP, the PUC, or the Federal Aviation Regulations.
 - f. No part of the Project will be inconsistent with the policies set forth in Section 2.1.2 of the JWA AELUP regarding Safety Compatibility Zones. Furthermore, the ALUC did not find, and cannot find, that the Project is inconsistent with Section 2.1.2 of the JWA AELUP.
 - g. Based on the foregoing, the Project will not result in the exposure of City residents to excessive safety hazards within the meaning of PUC Section 21670.

3. **Height.** The residential and commercial land uses under the proposed project are consistent with the height standards of the JWA AELUP, which are stated in the Federal Aviation Regulations, 14 C.F.R. Part 77, relating to Safe, Efficient Use and Protection of the Navigable Airspace.
- a. The General Plan Update states, as Policy S-4.1 Structures above 200 feet, “[p]roposed projects that would exceed a height of 200 feet above existing grade shall be required to file a Form 7460-1 with the Federal Aviation Administration (“FAA”).
 - b. In response to Recommendation 1.b. from the ALUC Staff Report, the General Plan Update is revised to state, as Policy S-4.2 Federal Aviation Regulation Part 77, “[d]o not approve buildings and structures that would penetrate Federal Aviation Regulation (“FAR”) Part 77 Imaginary Obstruction Surfaces, unless, consistent with PUC Section 21240, such building or structure is determined by the FAA to pose “no hazard” to air navigation.” Additionally, under this Policy, applicants proposing buildings or structures that penetrate the 100:1 Notification Surface will be required to file a Form 7460-1 Notice of Proposed Construction or Alteration with FAA and provide a copy of the FAA determination to the City and the ALUC. Referral to FAA for study under its Form 7460-1 process is appropriate because:
 - (1) “The United States Government has exclusive sovereignty of airspace of the United States” (49 U.S.C. § 40103(a)(1)).
 - (2) In order to use this airspace, the FAA Administrator is responsible for:
 - (i) Plans and policy for the safe use of the navigable airspace (49 U.S.C. § 40103(b)(1)); and
 - (ii) “[R]egulations on the flight of aircraft (including regulations on safe altitudes) for (A) navigating, protecting and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicle, and between aircraft and airborne objects” (49 U.S.C. § 40103(b)(2)).
 - (3) The FAA’s aeronautical studies under FAR Part 77 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. (PUC § sb21240).
 - c. The maximum allowable building heights in the zoning and land use designations proposed in the 55 Freeway/Dyer Road Focus Area range between 6 and 10 stories, or about 60 and 100 feet above ground level (“AGL”). These maximum allowable building heights would not exceed the FAR Part 77 imaginary obstruction surfaces for JWA, including the sloping, three-dimensional 50:1 Departure Surface, the sloping, three-dimensional 20:1 conical surface, and the 206’ above mean sea level (“AMSL”) horizontal surface.
 - d. The maximum allowable building heights in the zoning and land use designations proposed in the South Bristol Street Focus Area range between 10 and 25

stories, or about 100 to 250 feet AGL. Proponents of future structures exceeding 200 feet AGL and/or structures penetrating the 100:1 Notification Surface will be required to file a Form 7460-1 Notice of Proposed Construction or Alteration with FAA and provide a copy of the FAA determination to the City. Per Policy S-4.2, the applicant would be required to obtain an FAA determination of no obstruction or no hazard to air navigation before seeking City approval.

- e. The maximum allowable building heights in the zoning and land use designations proposed in the South Main Street Focus Area range between 2 and 3 stories, or about 20 to 30 feet AGL. These maximum allowable building heights would not exceed the FAR Part 77 imaginary obstruction surfaces for JWA, including the sloping, three-dimensional 20:1 conical surface, and the 206' AMSL horizontal surface.
 - f. The Project's requirement that future construction and development comply with the FAA's 7460-1 process ensures that building heights within the Project area will not pose a hazard to air navigation. This is consistent with and furthers the purposes of PUC Section 21670 by minimizing the public's exposure to safety hazards.
 - g. The Project is an approval only as to land use designation and zoning. No specific structures are contemplated as part of the Project. Therefore, nothing in the Project will create an obstruction or hazard to air navigation within the meaning of 14 C.F.R. Part 77, and no part of the Project involves the proposed construction or alteration of any structure. Accordingly, no aeronautical study is required as part of the Project. See 49 U.S.C. § 44718; 14 C.F.R. Part 77; FAA Order JO 7400.2M.
 - h. The Project does not create a safety hazard pursuant to PUC Section 21670.
4. **Heliports.** Heliports are not permitted in any residential (R1, R2, R3, or R4) District pursuant to Santa Ana Municipal Code section 41-621. Outside of residential Districts, heliports are only allowed with a conditional use permit ("CUP").
- a. The General Plan Update states, as Policy S-4.4 Heliport/helistop approval and requirements, "Approve the development of a heliport or helistop only if it complies with the ALUP for heliports." Policy S-4.4 further makes it City policy to "[e]nsure that each applicant seeking a conditional use permit or similar approval for the construction or operation of a heliport or helistop complies fully with the state permit recommended by the FAA, by Orange County ALUC, and by Caltrans/Division of Aeronautics. This requirement shall be in addition to all other City development requirements."
 - b. As described in Draft PEIR Section 5.8, any applicant proposing a heliport "shall undergo review by the ALUC, obtain an Airspace Analysis from the FAA as specified in Section 2.1.5 of the JWA AELUP, and confirm consistency with the JWA AELUP prior to construction, as specified in Section 4.7 of the JWA AELUP."
 - c. The Project and existing provisions within the Santa Ana Municipal Code restrict the establishment of heliports within the City. Heliports are only allowed in non-residential districts, and only once the applicant obtains a CUP following FAA

Airspace analysis and other review procedures. These restrictions minimize the public's exposure to excessive noise and safety hazards, in furtherance of the purposes of PUC Section 21670.

- d. ALUC has determined that the Project is consistent with the Heliports AELUP on condition that the City include a statement in the General Plan Update (Safety Element Policy S-4.4) that any proposals for heliports/helipads within the City be submitted through the City to ALUC for a consistency determination.