

March 21, 2013

Mr. Mark Child
Los Angeles County Airport Land Use
Commission
320 West Temple Street
13th Floor
Los Angeles, CA 90012

Re: Application for General Plan Consistency Review of Los Angeles International
Airport ("LAX") Specific Plan Amendment Study ("SPAS") - Project No. R2013-
00396-(2) - Aviation Case No. 201300001

Dear Mr. Child:

These constitute the supplemental comments of the Cities of Culver City and Ontario, California and the County of San Bernardino ("Cities/County") concerning the Staff Report recommending a determination of consistency by the Los Angeles County Airport Land Use Commission ("ALUC") between the proposed amendments to City of Los Angeles plans associated with "Los Angeles International Airport Specific Plan Amendment Study" ("SPAS Amendments") and the Los Angeles County Airport Land Use Compatibility Plan ("ALUCP"). Cities/County respectfully submit that the Staff Analysis recommending a finding of consistency is flawed in the following ways:

(1) it arbitrarily disassociates the fundamental changes to the LAX Plan which are the source of the issues requiring ALUC review, from the derivative, essentially editorial SPAS Amendments, to the Los Angeles General Plan Land Use, Transportation and Noise Elements, such that;

(2) the ALUC is not asked to consider the full project's admittedly draconian noise impacts, or the inadequacy of the measures proposed to mitigate those impacts in violation of CLUP Policies N-1 and N-2; and

(3) the ALUC is asked to ignore the project's lack of compliance with Federal and State regulations governing allowable uses in Runway Protection Zones ("RPZs"), and its resultant violations of CLUP Policies S-4 ["prohibit, within a designated Runway Protection Zone, the erection or growth of objects which rise above and approach surface unless supported by evidence that it does not create a safety hazard and is approved by the FAA"] and S-7 ["comply with height restriction standards and procedures set forth in FAR Part 77"].

I. THE STAFF REPORT IS BASED ON AN ARBITRARY DISTINCTION BETWEEN THE IMPACTS OF THE PROJECT, INVOLVING CHANGES TO LAX AIRSIDE FACILITIES, AND THE DERIVATIVE SPAS AMENDMENTS

The Staff Analysis is emphatic that “ALUC review is limited to only the above amendments and not the study of airport improvement alternatives also contained in the SPAS. Should the City want to implement those improvements in the future, such actions would need to come before the ALUC for review.” Staff Analysis, p. 1. That distinction fails, however, because the “Preferred Alternative” project approved thus far by the Board of Airport Commissioners (“BOAC”) and Los Angeles City Planning Commission (“LAPC”) are necessary predicates to the plan changes that are the purported subjects of current ALUC review. In the words of an old song, like love and marriage, “you can’t have one without the other.”

Nevertheless, Staff relies on LAWA’s “Aviation Application for General Plan Consistency Review of the LAX Specific Plan Amendment Study Project” (“Aviation Application”) for the proposition that, in essence, ALUC review is premature before project level analysis is conducted and FAA approval obtained. Aviation Application, p. 2. Staff’s reliance is misplaced, however. LAWA is already seeking approval from the Los Angeles City Council for the EIR’s Preferred Alternative, Alternative 1, involving, among other things, movement of the runway 260 feet north, on the ground of the completeness and integrity of LAWA’s analysis of project impacts. LAWA cannot now be seen to claim, purely for the purpose of ALUC review, that its analysis was not sufficiently complete to allow for application of ALUC noise and safety policies.

In summary, the artificial distinction established in the Staff Analysis between the project causing the impact, the proper subject of analysis and ALUC review, and its editorial documentation, the SPAS Amendments, in the form of amendments to various sections of the Los Angeles General Plan, is both arbitrary and improperly attenuated. Cities/County therefore ask that the ALUC defer its determination pending a full analysis of the full project’s compliance with the required parameters of ALUC policy.

II. BY STUDYING ONLY THE DESIGNATED SPAS AMENDMENT, AND OMITTING EVALUATION OF THE FULL PROJECT’S DRACONIAN NOISE IMPACTS, THE ALUC WOULD VIOLATE ITS OWN NOISE POLICIES

Under the limitations of the Staff Analysis, the SPAS Amendments do not relate to or address “the CNEL method,” “sound insulation,” the “utilization of the Land Use Compatibility Table,” or “buyer awareness measures.” Nothing could be further from the facts. The underlying project will cause, in Inglewood alone, almost 12,000 citizens, 4,600 housing units, 400 acres of land, 15 school and 21 churches to be newly and significantly impacted by the expanded 65 CNEL noise contour, and/or a 1.5 dB increase in noise within the existing 65 dB CNEL significant noise contour. FEIR, Tables 2.3.9-2, p. 2-147; 2.3.9-3, p. 2-148. Thus, the project, as defined in its entirety, will cause additional land use incompatibility, in direct violation of CLUP Policies G-5 and N-3.

Moreover, these impacts are not proposed to be fully mitigated, in direct contravention of CLUP Policy N-2. Instead, because the land use mitigation measures would take several years to fully implement, it is possible that significant noise impacts would be experienced in the area after implementation of the LAWA Staff-recommended alternative but before the mitigation measures are fully implemented. Thus, “significant and unavoidable interim noise impacts would be experienced over an indeterminate period of time.” FEIR, § 2.3.10.1.3, p. 2-167.

The extreme scope and significance of the Project’s noise impacts on surrounding communities could theoretically be mitigated by a massive commitment to an Airport Noise Mitigation Program (“ANMP”), providing sound insulation for all residences significantly impacted by noise from the Project. In this case, however, that commitment is vitiated by: (1) the apparently “indeterminate” period before implementation of mitigation; and (2) the Federal Aviation Administration’s (“FAA”) Program Guidance Letter 12/09, purporting to amend FAA Order 5100.38C, which has drastically changed the way in which eligibility for sound insulation is calculated.

First, the FEIR appears to set forth tangible conditions for implementation of mitigation measure MM-LU-1, Implement Revised Aircraft Noise Mitigation Program, and provides that “LAX Master Plan Mitigation Measure MM-LU-1 . . . would incorporate all eligible dwellings and non-residential noise-sensitive facilities that are newly exposed to noise levels 65 CNEL or higher into the Aircraft Noise Mitigation Program (ANMP) to mitigate the significant noise impact described in Table SRA-2.3.10.1-9,” FEIR, § 2.3.10.1.3, p. 2-166. That appearance is deceptive, because the FEIR also maintains that, despite these “revised” measures, “significant and unavoidable interim noise impacts would be experienced over an indeterminate period of time,” FEIR, § 2.3.10.1.3, p. 2-167.

LAWA also argues that “the performance standard for this noise insulation measure is 45 dB CNEL; therefore, any homes that have achieved this interior noise level are considered less than significant under CEQA.” Response to Comment SPAS-AL00007-30, p. 4-195. The Program Guidance Letter 12-09, however, specifies a somewhat different standard. It requires that, to be eligible for sound insulation, the impacted structure must be below “an average of 45 dB interior noise across all habitable rooms,” [emphasis added]. LAWA, in the FEIR, however, is unclear as to the standard that it plans to apply in measuring achievement with the average 45 dB standard – (1) below 45 dB in any given room, or (2) on the basis of an average across the entire dwelling. And if the latter, the FEIR fails to specify: (1) the way in which such an average will be calculated, *i.e.*, by square footage, number of rooms, or other standards; and (2) how varying noise levels throughout the day will affect that average.

Given the 12,000 residents of Inglewood alone who will be immediately, significantly and adversely impacted by noise from the Project, not to mention the thousands of additional residents within the jurisdictions of other surrounding communities, the mitigation goal of 45 dB average internal noise proposed to be accomplished at some unspecified time in the distant future cannot be considered either feasible, or sufficiently specific in the establishment of a performance standard to achieve compliance with ALUC policies.

III. THE FACTS DISCLOSED IN THE EIR BELIE LAWA'S CLAIM THAT THE PROJECT COMPLIES WITH FAA SAFETY REQUIREMENTS, AND, THUS, CLUP POLICIES S-4 AND S-7

While LAWA claims that “[t]he proposed airfield improvements would be designed in conformance with FAA safety requirements, as set forth in FAR Part 77, and would be consistent with ALUP policies that address RPZs and limit uses within these zones,” FEIR, § 2.3.9.1, p. 2-139, LAWA also discloses that “[t]he proposed relocation of runway 6L/24R 260 feet northward would shift the associated RPZ northward by the same amount, which would extend over existing developed uses near the east end of the runway that are not currently within the existing RPZ,” FEIR, § 2.3.7.2.1, p. 2-111. In yet another turn around, LAWA further claims that while “[t]he presence of such uses . . . may be considered incompatible with FAA design recommendations that RPZ areas be clear of all obstructions and occupied uses; however, it is not considered to pose a significant safety hazard compared to baseline conditions.” FEIR, § 2.3.7.2.1, p. 2-117.

LAWA conveniently forgets both State and Federal law governing the areas around airports. FAA’s Advisory Circular 150/5300-13A specifically sets forth rules governing permitted uses within RPZs. “It is desirable to clear the entire RPZ of all above ground objects. Where this is impractical, airport owners, as a minimum, shall maintain the RPZ clear of all facilities supporting incompatible activities.” Advisory Circular 150/5300-13A, § 310.a.(2), p. 70. Incompatible activities include, but are not limited to, those which would lead to an assembly of people. *Id.* citing FAA Memorandum, Interim Guidance on Land Uses Within a Runway Protection Zone, 9/27/2012.

Incorporating this standard into State law, Cal. Pub. Util. Code § 21001, *et seq.*, (“State Aeronautics Act”), which governs and structures all airport land use plans within the State, including that of Los Angeles County, explicitly recognizes the preemptive authority of Federal law in the area of aviation safety. “This state recognizes the authority of the federal government to regulate the operation of aircraft and to control the use of the airways, and nothing in this Act shall be construed to give the department the power to so regulate and control safety factors in the operation of aircraft or to control use of the airways.” Cal. Pub. Util. Code § 21240. As the RPZ is “primarily for the purpose of safety . . .,” Advisory Circular 150/5300-13A, § 310.a.(1), p. 70, allowable uses within it are determined entirely by Federal regulation.

Despite these clear mandates, LAWA anticipates adding to the RPZ at least 40 land uses, FEIR, Table SRA-2.3.7.2-2, more than one-half of which implicate “assemblies of persons.” Moreover, the new approach surface for Runway 24R mandated in FAA’s regulation, 14 C.F.R. Part 77, and incorporated into the ALUP by reference, includes “the upper portion [of an] existing five story office building located at the northwest corner of Sepulveda Boulevard and Westchester Parkway,” FEIR, § 2.3.7.2.1, p. 2-110. Nevertheless, LAWA postpones determination of the necessary mitigation of this clearly substantial safety impact. “The need, if any, for acquisition or other appropriate measures associated with changes in the RPZs will be determined by the FAA in later stages of planning and therefore are not addressed in this EIR.”

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FEIR, § 2.3.9.1, p. 2-140. This nonspecific mention of potential mitigation does not create consistency with Federal law or the Public Utilities Code, and does nothing to eliminate the project's manifest inconsistency with the derivative requirements of the Los Angeles County Airport Land Use Plan.

For all the above reasons, Cities/County renew their request that ALUC continue its deliberations and incorporate into them consideration of the manifest impacts of the project preferred by LAWA and already approved by the Los Angeles Board of Airport Commissioners and the Los Angeles City Planning Commission.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By



Barbara Lichman