

August 22, 2013

VIA E-MAIL (JJONES@COUNSEL.LACOUNTY.GOV)

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County of Los Angeles
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Re: Impasse Appeal - Response to Inquiries by ALUC Staff

Dear Jill:

Thank you again for being kind enough to meet with us to discuss the bases for the Impasse Appeal brought pursuant to section 21670.2(a) of the Public Utilities Code by Appellants Culver City, Ontario and County of San Bernardino ("Appellants"). At that meeting you requested that supplementary information be submitted for your consideration on the following topics prior to the hearing on the Impasse Appeal, currently scheduled for September 11, 2013.

First, you requested reference to those sections of the LAX Plan (a section of the City of Los Angeles General Plan) and Specific Plan Amendments that included runway movement. Globally, I refer you to the LAX Specific Plan Amendment Study ("SPAS") Report of July 12, 2012 which, together with the SPAS DEIR, "make up the SPAS," *i.e.*, a "study" of amendments to the Specific Plan. LAX SPAS Report, July 2012, § 1.1. The SPAS Report confirms that "Section 7.H. of the LAX Specific Plan requires LAWA to complete an LAX SPAS." LAX SPAS Report, § 1.2. The SPAS' stated objectives include to "provide North Airfield improvements that support the safe and efficient movement of aircraft at LAX." SPAS Report, § 1.4. For that reason alone, it is clear that the "amendments" addressed in the Specific Plan "Amendment" Study, include runway movement.

Further, Chapter 7 of the SPAS Report identifies "administrative amendments to the LAX Specific Plan that would be required if an alternative project is approved," § 7.2, which approval, as of April, 2013, has occurred (*i.e.*, the "project" being the combination of Alternatives 1 and 9, calling for the movement of northernmost runway 6L/24R 260 feet to the north). These amendments include "Section 9. AIRPORT AIRSIDE SUBAREA". This section

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would be revised as necessary to incorporate any uses currently relevant to the airport or anticipated under the SPAS alternatives, but which are not already included in the list of permitted uses. This amendment would occur under all alternatives except Alternative 3 [the current Master Plan],” Chapter 7, § 8. Thus, it is equally clear that the amendments to the “airside subarea” are an integral part of the Project.

In short, now that a “project” has been designated and approved by the Los Angeles City Council which includes airside improvements, among them movement of the runway 260 feet to the north toward populated areas, Los Angeles World Airports (“LAWA”) acknowledges that an amendment to the LAX Specific Plan is required. *Id.* Pursuant to Public Utilities Code § 21676(b), that amendment falls directly within the Airport Land Use Commission’s (“ALUC”) jurisdiction. That LAWA failed to submit the required substantive amendments to the ALUC, and instead submitted only nominal “technical” or editorial amendments does not change the reality established in their own SPAS Report that the movement of the runways is an integral part of the amendments to the LAX Plan and LAX Specific Plan and, thus, is also part and parcel of the ALUC’s review responsibility.

Second, Public Utilities Code § 21664.5 cannot shield LAWA from that review, although it purports to give Caltrans permit authority over airport development and expansion. That section has long been superseded by Federal law. *See*, Public Utilities Code § 21240 which states: “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 control use of the airways.”

Preemptive Federal power extends to the design and operation of airports as well. FAA Order 5190.6B (governing airport development), Appendix R, § VI.A.1 defines “safe” as “meets design standards . . . and provides for the safe operation of aircraft.” “The determination of what constitutes ‘safety’ lies clearly and exclusively in the domain of the FAA,” FAA Order 5190.6B, Appendix R, § V.A.2. The FAA Order draws its authority from the United States Congress which has repeatedly expressed its intention to displace state law and establish a single uniform system of control over air safety. *Montalvo v. Spirit Airlines*, 508 F.3d 464, 472-474 (9th Cir. 2007).

Caltrans’ acknowledgment of the FAA’s total preemption of aviation safety, including runway design, is evidenced by the fact that, since its unsuccessful efforts to impose a curfew on San Diego International Airport as a permit condition (*see San Diego v. Gianturco*, 651 F.2d 1306 (1981)), Caltrans’ permit process consists only of approvals or “variances” from permit conditions, but never permit denials.

Finally, you asked about the way in which the further separation of the runways on the North Runway Complex poses safety issues violative of the Public Utilities Code and Los Angeles County Airport Land Use Compatibility Plan (“ALUCP”). We call your attention to Appellants’ comments on the SPAS DEIR and SPAS FEIR attached to this letter as Exhibits 1

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and 2. In those letters, Appellants' pointed out the DEIR's acknowledgment that the movement of Runway 6L/24R north would also move its Runway Protection Zone ("RPZ"), thereby causing the RPZs under all alternatives to encompass numerous structures. DEIR, § 4.7.2. The DEIR, however, fails to disclose the runway relocation's land use impacts on the Westchester Business District, some or all of which will fall within the RPZ for the chosen alternative. These sins of omission are particularly important for at least two reasons: (1) FAA regulations require that property belonging to an airport and located within an RPZ be kept clear of structures in order to "enhance the safety of persons and property on the ground," FAA Advisory Circular 150/5300-13, § 212; and (2) to the extent that land uses outside the airport property fall within the RPZ the Public Utilities Code and ALUCP constrain the reuse of such property by its owners. Public Utilities Code § 21675(a).

Moreover, the movement of the runway will change the noise contours for the North Airfield, and in doing so, instead of reducing and/or mitigating significant noise impacts as required by the ALUCP, will incorporate 12,000 additional persons in Inglewood alone into the 65 CNEL, significant noise impact contour, without implementing any current mitigation.

In summary, the DEIR discloses the incursion of several structures into the Part 77 obstruction surface for relocated Runway 6L/24R thereby creating an "obstruction to air navigation," 14 C.F.R. Part 77.1(b), an additional violation of both the Public Utilities Code and the consistent ALUCP. All of the referenced violations of Federal Orders, state law and the ALUCP in the SPAS project go directly to safety, not merely of "persons on the grounds," but, in the case of violations of Part 77, of air navigation as well.

We are confident that the above information satisfies your request. If there is anything else we can provide, please don't hesitate to contact us.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 

Barbara Lichman

cc: Paul Haney
Chris Hughes

EXHIBIT 1

October 10, 2012

VIA E-MAIL (SPASEIRCOMMENTS@LAWA.ORG)

Los Angeles World Airports
Facilities Planning Division
Attn: Diego Alvarez
1 World Way
Los Angeles, CA 90045-5803

Re: Draft Environmental Impact Report for the Los Angeles International Airport
Specific Plan Amendment Study - Comments of City of Inglewood, City of
Culver City, City of Ontario and County of San Bernardino

Dear Mr. Alvarez:

The following are the comments of the City of Inglewood, City of Culver City, City of Ontario and County of San Bernardino (collectively "Cities/County") concerning the Draft Environmental Impact Report for the Los Angeles International Airport Specific Plan Amendment Study ("DEIR"). From a global perspective, Cities/County view the DEIR as just the latest illustration of the ancient adage – "The more things change, the more they stay the same," where the DEIR reflects the same analytic deficiencies as Cities brought to the attention of Los Angeles World Airports ("LAWA") in their comments on the environmental review of the Draft and Supplemental Draft Environmental Impact Report/Environmental Impact Statement, Los Angeles International Airport Proposed Master Plan and Master Plan Addendum in 2003 and comments on the Notice of Preparation of Draft Environmental Impact Report (SCH No. 1997061047) – Los Angeles International Airport Specific Plan Study on June 17, 2008 and Revised Notice of Preparation of Draft Environmental Impact Report (SCH No. 1997061047) – Los Angeles International Airport Specific Plan Study on November 29, 2010, which are attached to this letter as Exhibits 1, 2 and 3 respectively, and incorporated in it by reference.

Specifically, the DEIR continues LAWA's long tradition of:

(1) Failing to designate a "project," substituting instead an array of project components, leaving it up to the reviewer to aggregate and analyze the collective impacts of the various ground and air components, in defiance of the mandate of the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.*, ("CEQA") for an "accurate, stable and finite description." *See, e.g., Planning and Conservation League v. Castaic Lake Water Agency*, 180 Cal.App.4th 210, 234 (2010);

(2) Failing to designate a proper “No Project” Alternative where Alternative 3, the existing, approved Master Plan, still includes the “Yellow Light” projects that were required by a settlement of the case of *City of El Segundo, et al. v. City of Los Angeles, et al.*, Riverside County Superior Court Case No. RIC426822 (“Settlement”) to be replaced by other projects that serve the same purposes, and over which Settlement the Court still retains jurisdiction;

(3) Disclaiming the manifest capacity enhancing impacts, both on and off-airport, of the project, including potential shifting of flight paths over the proximate communities of Inglewood and Culver City, despite FAA’s definition of capacity as “throughput rate, i.e., the maximum number of operations that can take place in an hour,” FAA Advisory Circular 150/5060-5, § 3, and despite the DEIR’s long discussion of the way in which greater runway separation will facilitate greater efficiency, and, thus, “throughput” by, among other things, providing an airfield “consistent with FAA design standards for the largest aircraft types currently in service . . . for all weather conditions,” and “[m]inimize modifications of standards, waivers, or operational restrictions, all of which reduce airfield efficiency and level of service.” DEIR, § 1.2.1.1, p. 1-11; and

(4) Failing to adequately analyze the project’s air quality, greenhouse gas, noise, land use and planning, and surface transportation impacts.

I. THE DEIR DOES NOT COMPORT WITH CEQA’S MANDATE TO DESIGNATE AN ACCURATE, STABLE AND FINITE PROJECT DESCRIPTION

In a new twist on the same old theme, the DEIR fails to designate a project at all. Rather, it states that LAWA will choose a “project” at the conclusion of public comments and in the Final EIR (“FEIR”), *see, e.g.*, § 1-26, 1.2.3 [“more detailed evaluation of that relationship [between each project objective and each SPAS alternative] will be completed in conjunction with further evaluation of the alternatives through preparation of the Final EIR and during the public hearings process.”].

In lieu of a “project,” the DEIR provides an array of airfield and surface traffic choices from which the public can choose “one from Column A and two from Column B” and, thereby, purportedly, compute the environmental impacts of each. In taking this approach, the DEIR flies in the face of judicial authority which unanimously requires not only that a project include “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . .” CEQA Guidelines § 15378(a); *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora*, 155 Cal.App.4th 1214, 1222 (2007), but also that the scope of the environmental review conducted, even for the Initial Study, “must include the entire project. Specifically, “[a]ll phases of project planning, implementation, and operation must be considered” as early as in the Initial Study of the project.” CEQA Guidelines § 15063(a)(1); *Tuolumne, supra*, 155 Cal.App.4th at 1222. Therefore, whether a program or project EIR is contemplated, by the time the DEIR stage is reached, a coherent whole must be presented to the public, not interchangeable parts in as yet indeterminate combination.

Here, in direct contravention of these unequivocal requirements, the DEIR presents nine options from which the public may choose. The options are not “alternatives” to one another in the standard sense, because only options 1 through 4 are complete projects, *i.e.*, include both airfield components and off-airfield surface traffic components. Alternatives 5 through 7 omit any mention of associated surface traffic or its impacts. Conversely, options 8 through 9 evaluate only surface traffic, and omit any mention of airfield improvements. Apparently, this approach was chosen on the assumption that the impacts of various components are additive, *e.g.*, the air quality and noise impacts of Alternative 5 can simply be added to those of Alternatives 8 or 9 as assumed in the EIR. Certain impacts, however, such as noise are evaluated logarithmically. That means the noise impacts from the surface traffic discussed in Alternatives 8 and 9 may be subsumed within the far greater noise impacts calculated from airfield operations when the two are added together, masking the true impacts of both.

Nor can the DEIR’s approach be justified on the ground that the airfield and surface traffic options have “independent utility,” *see, e.g., Planning and Conservation League, supra*, 180 Cal.App.4th at 237, and would occur with or without the project. It is clear from the DEIR that surface traffic improvements are critical to the stated purpose of the project as a whole, the replacement of the “Yellow Light” projects, as defined in the Settlement, which includes both airfield and surface traffic projects. *See, e.g., DEIR, Project Description, § 2.2, Objective No. 2, “Improve the Ground Access System at LAX to Better Accommodate Airport-Related Traffic, Especially as Related to the Central Terminal Area.”* [Emphasis added.]

In short, the DEIR fails to designate a “project” or preferred alternative at all. Rather, it confronts the public with four “projects” and five components of a single project, and asks it to evaluate several in combination, all with the same level of specificity, as any one or more may be chosen to be implemented. The same sort of obfuscation was summarily rejected by the court in *Woodward Park Homeowners Association, Inc. v. City of Fresno*, 150 Cal.App.4th 683, 711 (2007). In that case, the court rejected the use of a baseline predicated on a previously approved project, rather than the existing physical condition of the property, which would have required the public to research prior published documents to create a relevant comparison with project impacts. Its holding applies to the complex conglomeration of options at issue here including the synergistic impacts of each of those options with those projects of Alt. D, the current Master Plan, which are still being implemented. “The sum of the earlier identified impacts and those identified now would be the actual impacts of the present project. . . Even assuming this [addition] would have been possible, an agency cannot satisfy its CEQA obligations by imposing a burden of that kind on the public.” *Id.* at 711.

II. THE DEIR INCORRECTLY RELIES ON ALTERNATIVE 3 AS THE “NO PROJECT” ALTERNATIVE WHERE IT INCLUDES IMPLEMENTATION OF THE “YELLOW LIGHT” PROJECTS THAT WERE ELIMINATED BY THE SETTLEMENT

The purpose of the “no project” alternative is to allow a comparison of the environmental impacts of approving the proposed project with the effects of maintaining the status quo. CEQA Guidelines § 15126.6(e)(1). When the project involves revisions of an existing plan, policy, or

ongoing operation, the “projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.” CEQA Guidelines § 15126.6(e)(3)(A). *See also, Woodward Park Homeowners, supra*, 150 Cal.App.4th at 711. CEQA Guidelines § 15126.6(e)(3)(C) further provides that the lead agency “should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” In addition, an EIR’s analysis of the no project alternative must also include a discussion of conditions existing at the time the notice of preparation is published, or, in the alternative, upon commencement of the environmental analysis. CEQA Guidelines § 15126.6(e)(2).

In this case, Alternative 3 does seem to meet the basic definition, *i.e.*, the situation on the ground including all previously approved projects. However, this is not a conventional case. Alternative 3 here includes “Yellow Light” projects which, according to the Settlement, are to be replaced with other projects which serve the same purpose. Therefore, Alternative 3 actually includes more components than are currently permitted or can be expected to be implemented.

In this unique situation, Alternative 4 would seem to be the appropriate “No Project” Alternative. That is because Alternative 4 represents the “project” with “Yellow Light” projects, *i.e.*, those that cannot “reasonably be expected to occur in the foreseeable future if the project were not approved,” CEQA Guidelines § 15126.6(e)(3)(C), eliminated.

It is also notable that Alternative 4 is used as the benchmark of analysis in the air quality analysis, Table 4.2-14, as the closest to the “no Yellow Light” condition. [“Of the nine alternatives, Alternative 4 has the least amount of improvements and most closely represents a future (2025) ‘no Yellow Light Projects’ scenario. . .”]. DEIR, p. 4-121. In summary, the existing Master Plan represented by Alternative 3 is not, in this peculiar case, the proper No Project Alternative against which to benchmark the impacts of the project.

III. THE DEIR IMPROPERLY DISCOUNTS THE CAPACITY ENHANCING POTENTIAL OF THE PROJECT

As was true with respect to the 2003 Master Plan EIR, the DEIR here strongly emphasizes the safety enhancing purposes of the project, and downplays its capacity enhancing potential. In fact, the DEIR emphasizes that a 30-40% increase in aircraft and passenger activity is projected to occur regardless of the project (*i.e.*, would occur if none of the SPAS alternatives was implemented). DEIR, p. 1-47, § 1.4. Nevertheless, the proposed “safety” improvements, including increased runway separations and extension eastward for the north runways, the addition of centerline taxiways, and high speed runway exits, to accommodate departures of the New Large Aircraft (“NLA”) and other aircraft that cannot currently access the North Airfield without delay, are inextricably linked to capacity, defined by FAA as “throughput rate, *i.e.*, the maximum number of operations that can take place in an hour.” FAA Advisory Circular 150/5060-5, § 3.

The DEIR itself does not disclaim this link to capacity enhancement. It makes clear that the further separation of the north runways is necessary to efficiently accommodate NLAs, and to allow for some larger aircraft currently using the South Complex to use the North Complex as well. *See, e.g.*, DEIR, pp. 1-10, 2-2. Nevertheless, aircraft activity is held constant across all evaluated runway alternatives. In other words, the number of flights into and out of LAX is identical (2053 operations per peak day), as is the aircraft fleet mix through which those flights are conducted. By assuming constant aircraft activity in 2025 under all four runway “integrated” alternatives, the DEIR is implying that LAX can handle the forecasted aircraft demand – even that related to the new generation of NLA – regardless of whether any redesign of the northernmost runways is implemented. That is, the DEIR assumes that the same aircraft, in the same numbers, will fly into and out of LAX whether the runways are moved or left as is, whether or not more efficient runway exits are constructed, and whether or not taxiways are or are not reconfigured. The explicit assumption is that the potential improvements will enhance the safety of these aircraft operations. However, in this case the improvements made to enhance safety also enhance effective runway capacity. It is this additional capacity that should allow for differential levels of activity under the various alternatives.

However, and despite the DEIR’s admission that the various airfield alternatives will have differential operational effects, depending on the type of aircraft, time of day and weather, the capacity enhancing impacts of these differential operational effects remain stubbornly unanalyzed because of “budget considerations.”¹ Neither the CEQA Guidelines nor the courts recognize such budget constraints on reasonable analyses, fundamental to a complete picture of project impacts. Until such analyses are conducted and their results reported, including an analysis of the differential operational characteristics of options 1 through 7, and their resulting capacity enhancing characteristics, including the potential for more divergent flight paths taking additional aircraft over proximate communities such as Culver City and Inglewood than currently exist, the DEIR will remain fatally defective.

IV. THE DEIR AIR QUALITY SECTION OMITTS DATA AND ANALYSIS CRITICAL TO A DETERMINATION OF THE IMPACTS OF THE VARIOUS ALTERNATIVES

In another exercise in “déjà vu all over again,” the DEIR air quality analysis omits both the data and analysis necessary to fully and accurately disclose the air quality impacts of any of the potential alternatives.

¹ *See* LAX Specific Plan Amendment Study Report, Appendix F-2, p. 1: “For the purposes of developing detailed airside design assumptions that could be utilized in modeling a reasonable range of airfield configuration options, and do so in an efficient and cost-effective manner taking into account contract scope and budget considerations, the simulation analysis focused on only Alternatives 1 through 4. Based on the detailed information developed for those alternatives, the SPAS Environmental Team was able to estimate performance assumptions and projections for Alternatives 5 through 7, as utilized in the aircraft noise and air quality analyses.”

A. The DEIR Presents Supporting Data Insufficient to Allow the Public to Verify the Accuracy of the DEIR's Analysis

As a threshold matter, the DEIR only reflects air quality modeling for options 1 through 4 (the integrated alternatives). For options 5 through 7, specific aircraft modeling (*e.g.*, runway assignments, delay times, etc.) was not performed. Instead, results were apparently inferred from modeling data for Alternatives 1 through 4, again for "budget considerations." LAX Specific Plan Amendment Study Report, Appendix F-2, p. 1. Moreover, the "inferred" data are not presented in either the main body of the DEIR or the appendices, and, therefore, it is not possible to evaluate the purported "inferences," even if they had been documented with data. This is especially true for Alternative 5 which proposes to move Runway 24R 350 feet to the north, essentially requiring extrapolation of the data beyond the 260 foot northward movement of Runway 24R proposed in Alternative 1.

In addition, the data that is provided is inadequate to assess even the impacts of the "modeled" Alternatives 1 through 4. First, under the constant activity approach discussed in Section III above, the only variables that should affect airside emissions are taxi time and delay time. Aircraft approach, takeoff and climbout emissions should be identical across the evaluated alternatives, as should Ground Support Equipment ("GSE") and Auxiliary Power Unit ("APU") emissions. The DEIR, however, fails to present aircraft emissions by operating mode, making it impossible to confirm the expected consistency using presented data.

Specifically, the DEIR contains no comparative tables either listing or summarizing the way in which GSE and APU populations were estimated, the way in which those populations were assigned activity estimates, or the way emissions were calculated from the activity. Instead, there is the cursory discussion referencing:

(1) A purported survey of data on specific GSE types and their times in mode for servicing common aircraft types, although the discussion does not reveal how "common types" were chosen, why the analysis did not apply to all aircraft using GSE, and what times in mode are applicable to GSE;

(2) Use of the FAA's Emissions Dispersion Modeling System ("EDMS") to supplement site specific data, without complete disclosure of the "site specific" data supplemented and the analytic interaction between the site specific data and the EDMS assumptions;

(3) General use of emissions factors from the California Air Resources Board ("CARB") OFFROAD2007 Model and 2011 Inventory Model for In-Use Off-Road Equipment in the analysis of GSE emissions without revealing the way in which each was used and the specific emissions factors derived from either. This is in spite of the fact that the DEIR acknowledges that "future year inventories of alternative-fueled GSE were based on these evaluations and LAX environmental policies." DEIR, p. 4-92; and

(4) For APU emissions rates, use of emissions factors from EDMS without disclosing the way in which the assumption that all gates would be equipped with preconditioned air (making APU use less necessary) was reached, the numerical impacts of that assumption, or the data or analysis underlying the assumption. DEIR, p. 4-93.

Finally, the aircraft emissions data that is presented in the DEIR reveals a fundamental inconsistency between Alternatives 3, Master Plan Alternative D, and Alternative 4, the “No Project” Alternative for air quality purposes (*see, e.g.*, Table 4.2-14). Presented data for Alternative 4 indicates 27.72 minutes per landing/takeoff cycle (“LTO”), and for Alternative 3, Alt. D, 29.56 minutes, *i.e.*, more aircraft emissions for the same total traffic. The 2003 Master Plan EIR, however, reached precisely the opposite conclusion with the taxi and delay times for the “No Action” Alternative exceeding that of Alt. D by 3%, and Alt. D exhibiting airside emissions generally 5% lower than those of the “No Action” Alternative.²

B. Reverse Thrust Emissions are Omitted from the Air Quality Analysis

Just as in the 2003 Master Plan EIR, and as addressed in Inglewood’s comments on that document attached, emissions associated with reverse thrust operations are not considered in the current DEIR. The bottom line then, as now, is that reverse thrust operations are common at LAX under all alternatives (*see, e.g.*, DEIR, p. 4-829), and there is an accepted procedure for estimating them. They are, moreover, a high thrust, high nitrogen oxide (“NO_x”) mode of operation. Thus, even though short in duration (normally 15 to 20 seconds per arrival), a high amount of NO_x is produced, all of which is emitted at ground level. The absence of any analysis of reverse thrust, therefore, casts doubt on the aggregate analysis of NO_x emissions from all project alternatives.

C. The DEIR Omits Critical Engine Assignments

The DEIR contains no information regarding the specific engine types used in the modeling of aircraft operations.³ As a result, it is impossible to evaluate whether the selection methodology and resulting emissions estimates are accurate. This omission is important because aircraft engines available and employed by different airlines for a given airframe can differ dramatically in their emissions profiles. Thus, the selection of specific engine types can have a significant bearing on the overall air quality impacts of any alternative that affects aircraft operations. As with the issue of reverse thrust emissions, aircraft engine selection was addressed in detail in Inglewood’s comments on the 2003 Master Plan EIR. At minimum, the DEIR should provide a list of the engine assignments utilized in the air quality modeling so that the potential significance of the engine differentials can be determined. The omission of that data renders the DEIR air quality analysis deficient.

² The total taxi and delay times for Alternative D (in the 2003 Master Plan EIR (then the Preferred Alternative)) was 31 minutes per LTO cycle, compared to 29.6 minutes per LTO cycle in the current DEIR.

³ *See also* comments on noise analysis which suffers from the same omission.

D. The DEIR Lacks Any Evaluation of the Project's Greenhouse Gas Impacts

Greenhouse gas (“GHG”) emissions from APU are not estimated in the DEIR, on the premise that “[a]lthough operations of APUs are expected to contribute to GHG emissions, EDMS does not estimate CO₂ emissions or fuel consumption; therefore, APUs are not included in the emissions inventory,” DEIR, p. 4-390. It is true that EDMS does not provide such capability, but that does not lead to the conclusion that GHG emissions cannot be estimated. While no formal model may be available, there are brake specific fuel consumption data available for APU engines. These data, combined with APU design and operational characteristics, and the carbon content of jet fuel, can be used to generate CO₂ emissions estimates for APU engines. Methane and nitrous oxide emissions may be less certain, but “typical” emissions factors for similarly operating engines can be applied without inordinate error (as methane and nitrous oxide emissions constitute only a few percent of total GHG emissions for typical mobile sources). In reality, the use of zero as a “default” emission rate for GHGs (an assumption implicit in cases where non-zero emissions are not estimated) reflects an analytic error that is grossly more significant than the error that might be associated with an imprecise, but non-zero, GHG emission estimation methodology.

The failure to analyze GHG emissions is legally insupportable as well. In *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70 (2010), the court found the City of Richmond’s initial failure to conduct any GHG analysis on a proposed refinery, as well as its ultimate failure, once analysis was conducted, to prescribe mitigation measures, rendered the EIR defective. *Id.* at 93.

E. The DEIR Omits from its Evaluation of Construction Emissions the Realignment of Lincoln Boulevard

While the DEIR addresses construction impacts at some length, it appears to omit a significant component of those impacts, the reconstruction, including undergrounding, of portions of Lincoln Boulevard. Options 1, 5 and 6, which include relocation of Runway 6L/24R to the north, include, of necessity, the relocation of 6,080 feet of Lincoln Boulevard, and, to varying degrees, its depression into a tunnel.⁴

Nevertheless, and despite the substantial construction activity required to realign, and tunnel to accommodate, a major thoroughfare, the DEIR entirely omits to study, or report on, the construction related impacts of the reconstruction of more than a mile of proximate roadway. *See, e.g.*, DEIR, p. 4-88.⁵ The remainder of the DEIR’s discussion of construction emissions

⁴ “Alternative” 1 requires 250 linear feet of tunnel; “Alternative” 5, 765 feet; and “Alternative” 6, 540 feet.

⁵ “Construction activities were assumed to be located on the north airfield and at the north terminals, in the Central Terminal Area (CTA), at Manchester Square, in the current Parking Lot C, at the proposed Intermodal Transportation Facility (ITF) site just south of Lot C, on the east side of Aviation Boulevard south of Century Boulevard, on the Automated People Mover (APM) routes along Century Boulevard and 98th Street, and on the west side where batch plant operations permitted by the SCAQMD and USEPA and project support activities could occur.”

suffers from the same deficiencies. *See also*, DEIR, pp. 4-112 and 4-118 re: emissions for Alternative 5, which alternative involves in the most radical realignment of Lincoln Boulevard.

F. The DEIR Lacks Any Data or Analysis of Sulfur Dioxide Emissions

Finally, emissions of sulfur dioxide (“SO₂”) do not appear to have been estimated for GSE, motor vehicles, or stationary sources, based on the omission of any SO₂ data from the “detailed” operational emissions tables included in DEIR Appendix C (*see, e.g.*, Table 21, Operational Concentrations). SO₂ emissions are exclusively a function of the sulfur content of fuel, which is relatively easily assessed, leaving no stated reason for their omission, but a gaping hole in the analysis.

In summary, budget constraints are not a sufficient excuse for depriving the public of the requisite air quality analysis and complete disclosure under CEQA. Moreover, this project will eventually require FAA funding. In order to obtain it, the project must comply with the conformity requirements of 42 U.S.C. § 7506(c), and its implementing regulation, 40 C.F.R. 93.150, *et seq.* Compliance will require that the project not exceed the emissions thresholds set forth in that section. It is Cities/County’s position that LAWA will be unable to establish the requisite conformity absent the filling of the data void specified here. And any reliance on a previous finding of conformity, based on the 2003 Master Plan EIR and associated conformity analysis, is seriously misplaced. That analysis never established conformity methodologically, but relied on an “exemption” provided by Southern California Air Quality Management District (“SCAQMD”), which was not delegated the duty of granting such an “exemption” under the then existing statutory regime. Thus, Cities/County strongly recommend the DEIR be revised to provide a thorough disclosure of the various options’ air quality impacts, in order to satisfy both Federal and State unequivocal mandates.

V. THE DEIR FAILS TO ADEQUATELY DISCLOSE THE PROJECT’S NOISE IMPACTS

The DEIR is dramatically deficient in its purported analysis of the noise impacts of the various alternatives. Notably, none of the noise contours depicted in the DEIR include the 1992 contour employed by LAWA for sound insulation purposes in Inglewood, *see* DEIR, p. 4-665.

Perhaps most notably, the noise analysis does not appear to have been based on the Integrated Noise Model (“INM”), the model required for use by FAA. FAR Part 150, Appendix A, § A150.103(a); FAA Order 1050.1E, § 14.2b. Instead, the flight tracks depicted in the EIR and used in the noise analysis appear to be radar tracks, wholly independent of the INM protocol.

Moreover, the noise analysis lacks critical fundamental data concerning types of aircraft, numbers of each type of aircraft projected, the number of operations anticipated for each aircraft type, and the source of the data in the DEIR database. Instead, the DEIR substitutes percentages without revealing the source or calculation of those percentages. Given the differential noise

signatures of the various aircraft, the absence of such critical raw data alone renders the noise analysis entirely inadequate.

Finally, the DEIR fails to explain why “Alternative” 5, with the greatest runway displacement of 350 feet, results in the least population exposed to the 65 CNEL contour, and the third least exposed to an increase of 1.5 decibels within the 65 CNEL contour, DEIR, p. 4-738, § 4.9.6.5, despite the fact that the “Alternative” 5 noise contour contains the second highest population newly exposed to the 75 decibel noise contour, DEIR, p. 1-83. Similarly, the DEIR concludes, without explanation, that “Alternative” 2, which does not contemplate any runway displacement, implicates more impacted land use than any other alternative, DEIR, p. 4-706, § 4.9.6.2.

These apparent, but unexplained inconsistencies, are merely systematic of a larger issue within the DEIR. While the DEIR cavalierly reaches numerous conclusions, not merely about noise, but also about air quality and other impacts, those conclusions are never fully explained either in the body of the DEIR or in its associated appendices. Thus, while the DEIR’s noise analysis is notable for its lack of underlying data and coherent analysis, its failure to explain its conclusions in such a way as to allow the public to adequately evaluate them is endemic to the entire DEIR.

VI. THE DEIR’S LAND USE AND PLANNING ANALYSIS SIGNIFICANTLY MISSTATES THE IMPACTS OF, AND MITIGATION POTENTIAL FOR, THE PROJECT

The DEIR relies on its land use and planning analysis as the bulk of its mitigation for the yet to be fully analyzed noise impacts of the various project options. That reliance is misplaced, not only from a substantive perspective, because the noise impacts still remain to be accurately analyzed, but also from a procedural perspective, as implementation of the FAA purchase and sound insulation programs upon which LAWA relies for mitigation, are years, even decades in the future, and, under recently published FAA policies, may never be applicable at all for a substantial portion of the impacted population.

The DEIR’s land use impacts analysis, § 4.9.6, p. 4-689, is procedurally flawed in several ways. First, it benchmarks the consistency of its alternatives to the existing LAX Specific Plan, recognizing at the same time that it is the fundamental purpose of the DEIR to document the amendment of the existing Specific Plan. Thus, the DEIR creates a moving target as a benchmark for analysis.

Second, with respect to the potential acquisition of property as mitigation for noise impacts, the DEIR indefinitely and impermissibly defers evaluation of the need for acquisition associated with changes in Runway 6L/24R’s Runway Protection Zone (“RPZ”), brought about by the runway’s movement north, despite the identification in § 4.7.2 of land uses in the RPZs for all options, thus leaving potential mitigation requirements unsatisfied. *Communities for a*

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Better Environment, supra, 184 Cal.App.4th at 92, citing CEQA Guidelines § 15126.4(a)(1)(b) [“Formulation of mitigation measures should not be deferred until some future time.”].

In doing so, the DEIR may be incorrectly relying on the claim that, in gaining compliance with the “clear zone” requirements for the RPZ, and included Runway Safety Area (“RSA”), FAA has the option of redirecting or removing an object. Page 4-512, § 4.7.2.6.1. FAA has no such option, because only the local land use jurisdiction possesses such power.

Moreover, the DEIR disclaims the need for any acquisition under options 5 through 7, purportedly because only airfield projects are at issue in those options, not the “integrated” options 1 through 4, thus disavowing the need for mitigation. The basis for this disclaimer is not discernible, in that the DEIR makes clear that it is the movements of the runways under options 5 and 6, as well as 1 and 3, that create the need for acquisition of property in the RPZ in the first instance, not the surface traffic options that are “integrated” into options 1 through 4.

From a substantive perspective, the DEIR omits relevant factors in the calculation of land use impacts resulting from the project. First, it entirely omits from its land use impacts analysis the Westchester Business District, part of which may be affected by the RPZ for one or more of the alternatives, without accompanying explanation. Second, it deceptively portrays the City of Los Angeles as the jurisdiction with the greatest existing impacted total land area, DEIR, p. 4-668, *see also* Table 4.9-4, by including the land mass of the airport in the calculation. If the calculation were not arbitrarily skewed by including the land area of the airport, the origin of the impact, in the determination of the impact’s scope, it is the City of Inglewood that would have, by far, the greatest land area impacted.⁶ The analysis, as well as the planning, should be predicated on that assumption alone.

Finally, the DEIR asserts that the impacts of noise can be mitigated to insignificance by sound insulation, as set forth in MM-LU-1. The DEIR ignores the fact that a sound insulation program encompassing the vast area already exposed to LAX’s noise impacts, as well as new areas in surrounding communities, will take decades to implement, if it is funded by FAA at all. And the totality of that funding is now in question. FAA recently published Program Guidance Letter 12-09, “AIP Eligibility and Justification Requirements for Noise Insulation Projects,” August 17, 2012 (“PGL”) which will limit the access of populations newly brought into the 65 CNEL contour, or affected by an increase of 1.5 dB or more, to sound insulation of all but a small percentage of homes with an average, across all habitable rooms, of less than 45 dB interior noise levels (*see*, September 17, 2012 letter to FAA regarding “Program Guidance Letter – 12-09 – AIP Eligibility and Justification Requirements for Noise Insulation Projects,” attached to this letter as Exhibit 4). This means, among other things, that those who are newly impacted by the project, but also who, in good faith, installed sound insulation with their own funds in some rooms; or who could afford to sound insulate bedrooms but not public spaces; or whose dwellings were below the 45 dB interior noise standard under the former operational

⁶ Table 4.9-2 seems to indicate that Inglewood has the greatest existing land area of noise impacted uses, in direct contradiction to the statement that “[t]he jurisdiction with the greatest total area (on- and off-airport) within the 65 CNEL or higher noise contour is the City of Los Angeles . . .,” DEIR, p. 4-668.

configuration but will be changed under the new regimen, may be left without mitigation, at least for the foreseeable future, a salient fact that is not acknowledged, let alone discussed or analyzed in the DEIR.

In summary, even though noise mitigation is alleged to be feasible, the DEIR is inadequate, both because necessary mitigation measures are entirely omitted with respect to the impacts of property acquisition; and because, in the alternative, even where mitigation measures are provided (although vague), “mandatory performance standards to ensure that the measures, as implemented, will be effective,” *Communities for a Better Environment, supra*, 184 Cal.App.4th at 94, are similarly absent.

VII. The DEIR Does Not Adequately Analyze or Mitigate the Project’s Admittedly Significant Surface Traffic Impacts

In spite of the DEIR’s acknowledgment of the significance of the project’s direct and indirect impacts on various intersections within the study area, it relegates those impacts to the category of “significant but unavoidable.” It is Cities/County’s position, however, that not only are those impacts, in fact, more extensive than reported in the DEIR, but also avoidable through the application of reasonable mitigation measures not offered in the DEIR.

A. The DEIR Does Not Fully Delineate or Mitigate the Surface Traffic Impacts of the Project on Culver City

First, the criteria used in the DEIR for calculating the project’s intersection impacts on Culver City is inaccurate. More than five years ago, Culver City requested that LAWA and City of Los Angeles Department of Transportation (“LADOT”) use “thresholds of significant transportation impact identified in LADOT’s traffic impact analysis guidelines to analyze the impact on intersections and streets in Culver City.” (*See*, letter of October 31, 2006 from Charles Herbertson, Culver City Director of Public Works and City Engineer to Jim Richie, LAWA, attached to this letter as Exhibit 5).

The rationale behind Culver City’s request is directly related to the SPAS. “This will simplify the preparation and review of the LAX Specific Plan traffic study, since the City of Los Angeles and Culver City share jurisdiction of several intersections that will be analyzed as part of the study.” (*See also*, letter to Gloria Jeff, General Manager, City of Los Angeles Department of Transportation, October 31, 2006, attached to this letter as Exhibit 6).

Nevertheless, the traffic study used Culver City’s, not City of Los Angeles’ traffic impact analysis criteria to assess the impact of the project on Culver City intersections. Use of Culver City criteria significantly understates the project’s impacts on those intersections. For instance, using LADOT criteria, the intersections of Centinela/Washington Boulevard (Intersection No. 30), Overland/Culver (Intersection No. 43) and Sepulveda/Slauson (Intersection No. 130) would, in fact, be impacted, as would the non-signalized intersections of Overland/Sawtelle (Intersection No. 154) and Walgrove/Washington (Intersection No. 156) which are already revealed as

impacted in the DEIR. Despite the acknowledged significance of the impacts on the latter intersections, however, the DEIR states that they already meet the Manual of Uniform Traffic Control Devices (“MUTCD”) warrants for the installation of these traffic signals and, therefore, Culver City should be fully responsible for the installation of the traffic signals. In this instance, as the project contributes to the significant impacts on those intersections, it stands to reason that Los Angeles should be responsible for the installation of traffic signals to mitigate the impacts.

Further, the DEIR traffic study, DEIR, p. 4-1301, indicates the project would have a significant impact at the intersection of Lincoln Boulevard and Washington Boulevard (Intersection No. 110), which is not in Culver City, but in the City of Los Angeles. The DEIR indicates that the addition of a southbound through lane would fully mitigate the project at this location. However, adding a southbound lane would require widening of the southbound approach and departure and is not considered feasible. In addition, the DEIR finds that there are no other feasible improvements that could fully mitigate the project’s impacts , and, thus, declines to mitigate, leaving the impact on that intersection significant and unavoidable.

With respect to the intersection of Lincoln Boulevard and Washington Boulevard, as with respect to other intersections within the project study area of which the DEIR deems the impacts “unavoidable,” there are, in fact, feasible mitigation measures that would alleviate these impacts. For example, with respect to northbound Lincoln Boulevard to westbound Washington Boulevard, the County of Los Angeles’ SR90 connector road to Admiralty Way would mitigate the project’s impact at this intersection as it would reduce the left turn traffic demand. Similarly, the Costco project at the intersection of Lincoln Boulevard and Washington Boulevard was required to pay Culver City \$1.5 million toward the SR90 connector road to Admiralty Way to mitigate Costco’s impact at this intersection. In the same way, LAWA should be responsible for contributing toward the SR90 connector road to Admiralty Way to mitigate the SPAS project’s significant impacts that, with the named mitigation, would be avoidable.

B. The DEIR Does Not Fully Delineate or Mitigate the Surface Traffic Impacts of the Project on Inglewood

The traffic analysis is flawed as it relates to Inglewood as well. First, although the Future (2025) with Alternative Impact Analysis Summary Table lists 25 of the 29 Inglewood intersections studied as having significant traffic impacts with one or more alternatives, the DEIR indicates that some potential intersection improvements such as those for the intersection of Arbor Vitae Street and Aviation Boulevard are not feasible (*see, e.g.*, § 4.12.2.6.4, p. 4-1283; § 4.12.2.7, p. 4-1285; and § 4.12.2.7.1, p. 4-1291). The DEIR does not, however, set forth the specific criteria upon which that determination was based. This is despite the fact that lack of right of way was cited as one factor of concern, but the acquisition of right of way is common as an element of intersection capacity improvement. The inevitable conclusion is that, even though Inglewood is a significant, perhaps primary conduit, for airport directed traffic, the DEIR shortchanges the manifest traffic, as well as other, impacts on Inglewood as well as on Culver City.

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In summary, the DEIR's inadequacies are no less substantial and significant for being, in many cases, repeats of old errors, because the public living and working in the project study area will be the ultimate victims of these analytic deficiencies. From a more global perspective, the DEIR represents not only a flawed attempt to implement an as-yet undesignated project with as-yet unanalyzed environmental impacts, but, insofar as LAWA's efforts go exclusively toward the expansion of capacity and associated improvements at LAX, also a patent abnegation of responsibility under the Settlement to regionalize air travel for the purpose of mitigating LAX's impacts on close-in populations, while providing increased air travel opportunities to the rest of Southern California. Due to the DEIR's manifest inadequacies, Cities/County strongly recommend LAWA revise and recirculate the DEIR in strict compliance with CEQA's unequivocal mandates.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 

Barbara Lichman

Attachments

EXHIBIT 2

March 8, 2013

VIA E-MAIL (SPASEIRCOMMENTS@LAWA.ORG; DALVAREZ@LAWA.ORG)

Los Angeles World Airports
Facilities Planning Division
Attn: Diego Alvarez
1 World Way
Los Angeles, CA 90045-5803

Re: Final Environmental Impact Report for the Los Angeles International Airport
Specific Plan Amendment Study - Comments of City of Inglewood, City of
Culver City, City of Ontario and County of San Bernardino

Dear Mr. Alvarez:

The following constitutes the comments of the City of Inglewood, City of Culver City, City of Ontario and County of San Bernardino (collectively "Cities/County") concerning the "LAX Specific Plan Amendment Study Final EIR" ("FEIR"), purporting to document the environmental impacts of the choice of Alternative 1 from the Draft Environmental Impact Report ("DEIR"), calling for various airfield and groundside changes to the Central Terminal Area, including, but not limited to, the movement of Runway 6L/24R 260 feet to the north ("Project").

At the outset, Cities/County wish to point out that the array of impacts resulting from implementation of the Project, and reported in the FEIR are real, not theoretical. In Inglewood alone, almost 12,000 citizens, 4,600 housing units, 400 acres of land, 15 schools and 21 churches will 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. Culver City too will suffer from a certain increase in overflights resulting from the projected increase of almost 500 average daily jet operations in 2025, of which 200 will be "heavy," and, thus, certainly, noisier. FEIR, § 2.3.10, Table SRA-2.3.10.1-1, pp. 2-150-151. Despite that enormous increase in noise impacts (falsely minimized by the seemingly small shifts in the size and location of the contours in the FEIR's graphics, *e.g.*, Figures SRA-2.3.9-1, SRA-2.3.10.1-2, and other soothing reassurances in the text of the FEIR), "[b]ecause 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.

In addition, communities to the east of the airport, including Culver City, will be subjected to inadequately analyzed air emissions impacts from aircraft operations, construction, and vehicle emissions, the last of which are exacerbated by similarly incomplete analyses of the Project's surface traffic impacts. For all these reasons, as well as those set forth below, the FEIR, like the DEIR before it, provides an incomplete, although already bleak, picture of the Project's potential impacts, leaving the affected communities to guess at their full scope, and rendering the FEIR, like the DEIR before it, inadequate.

I. THE COMMITMENT PROVIDED IN THE FEIR IS INADEQUATE TO MITIGATE THE PROJECT'S EXTREME NOISE IMPACTS

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, while 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, it 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. CEQA, however, mandates that, to be "feasible," a mitigation measure must be "capable of being accomplished in a successful manner within a reasonable period of time." Cal. Pub. Res. Code § 21061.1 [emphasis added]. While the formulation of the ANMP as a mitigation measure does not appear to have been improperly deferred, the unspecified period for its implementation does not satisfy CEQA's requirement that the lead agency have "committed itself to a specific performance standard," *Gray v. County of Madera*, 167 Cal.App.4th 1099, 1119 (2008).

LAWA argues that "the performance standard for this noise insulation measure is 45 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 45 dB level is not, however, a "specific performance standard," or specific means for achieving a certain noise level, analogous to the creation of a specific water supply mechanism in *Gray*,

supra, at 1119, but rather “a specific mitigation goal,” *Id.*, analogous to the “replacement of water lost by neighboring landowners.” *Id.*

Moreover, Program Guidance Letter 12-09 specifies a somewhat different standard. It requires that, to be eligible for noise insulation, the impacted structure must be below “an average of 45 dB interior noise across all habitable rooms,” [emphasis added]. The FEIR, however, is unclear as to the standard that LAWA 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 withstand judicial scrutiny.

II. THE FEIR FAILS TO REMEDY THE INADEQUACIES IN THE DEIR’S AIR QUALITY ANALYSIS

Although discussed exhaustively in Cities/County’s comments on the DEIR, the FEIR still fails to address salient issues brought up in those comments.

A. The FEIR Still Fails to Account for the Impacts of Reverse Thrust Emissions

In comment SPAS-AL00007-13, Cities/County observe that reverse thrust emissions continue to be excluded from LAX emissions analysis. In response, LAWA quotes from the FAA’s Emissions and Dispersion Modeling System (“EDMS”) (FAA’s aircraft emissions estimation model) User’s Manual, which states that aircraft activity estimation during taxi-in operations includes the “landing ground roll segment (from touchdown to the runway exit) of an arriving aircraft, INCLUDING REVERSE THRUST [emphasis in original], and the taxiing from the runway exit to gate,” Federal Aviation Administration, *Emissions and Dispersion Modeling System (EDMS) User’s Manual*, FAA-AEE-07-01, Rev. 7 - 11/06/09, prepared by CSSI, Inc., Washington, D.C., November 2009. The real question, however, is not whether EDMS claims to model reverse thrust emissions, but whether it actually does so.

Figures 1a and 1b below depict the NO_x emissions rates for the five operational modes for which EDMS estimates emissions.

Figure 1a. Example EDMS (B747-400) Emission Rates by Operational Mode

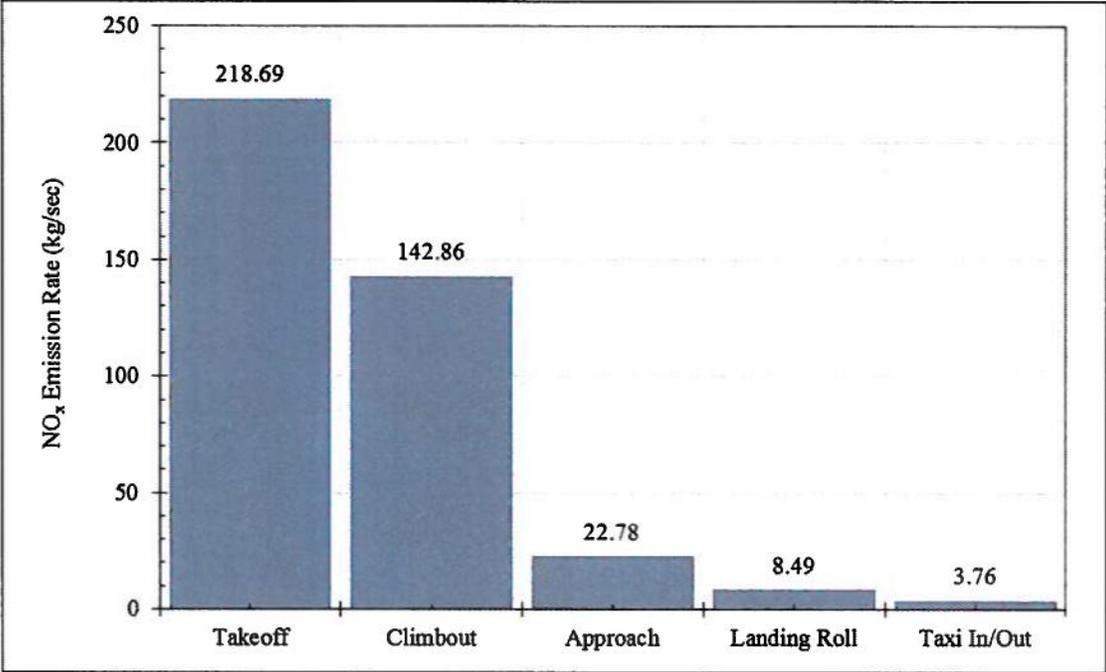
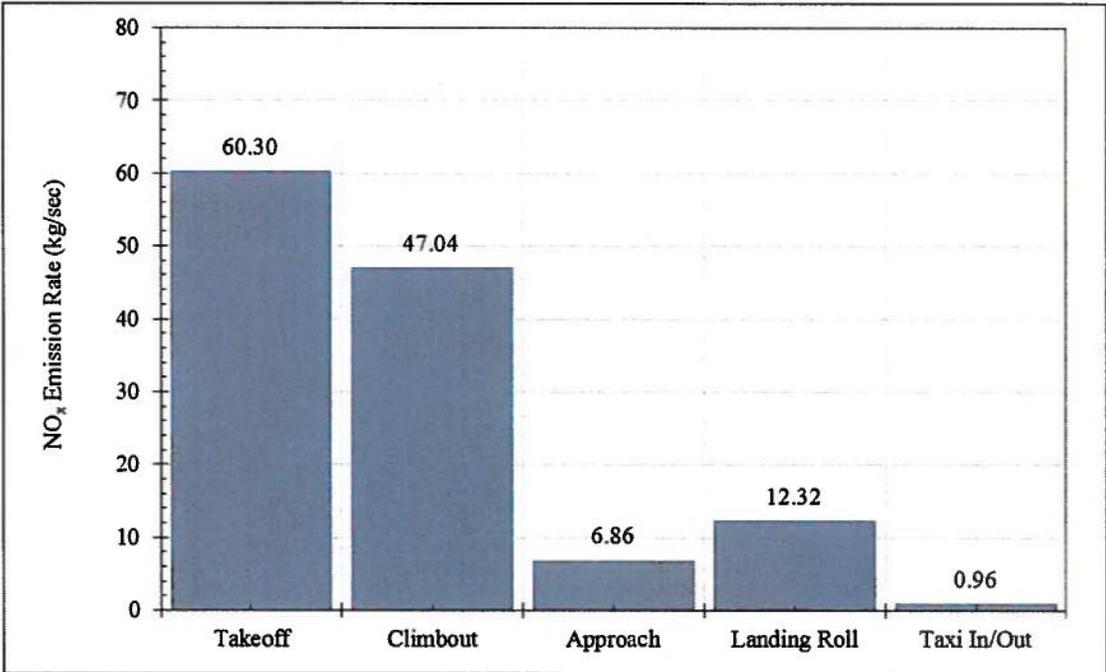


Figure 1b. Example EDMS (B737-800) Emission Rates by Operational Mode



As expected, NO_x emissions are directly related to thrust, being highest during takeoff and declining with thrust through the other modes. The exception is for the landing roll operational mode within which the FAA (through the EDMS User's Manual) claims to include reverse thrust operations. Such operations are high thrust and should reflect a relatively high NO_x emission rate, similar in magnitude to that of takeoff and climbout operations.

For the B747, Figure 1a indicates that landing roll NO_x reflects nothing more than a power-down transition from approach thrust to engine taxi. It might be possible that the reverse thrust portion of the landing roll mode is simply being "averaged down" with non-reverse thrust portions of the same mode. Figure 2a and 3a, however, seem to indicate that this is not the explanation.

Figure 2a. Example EDMS (B747-400) Operational Mode Durations

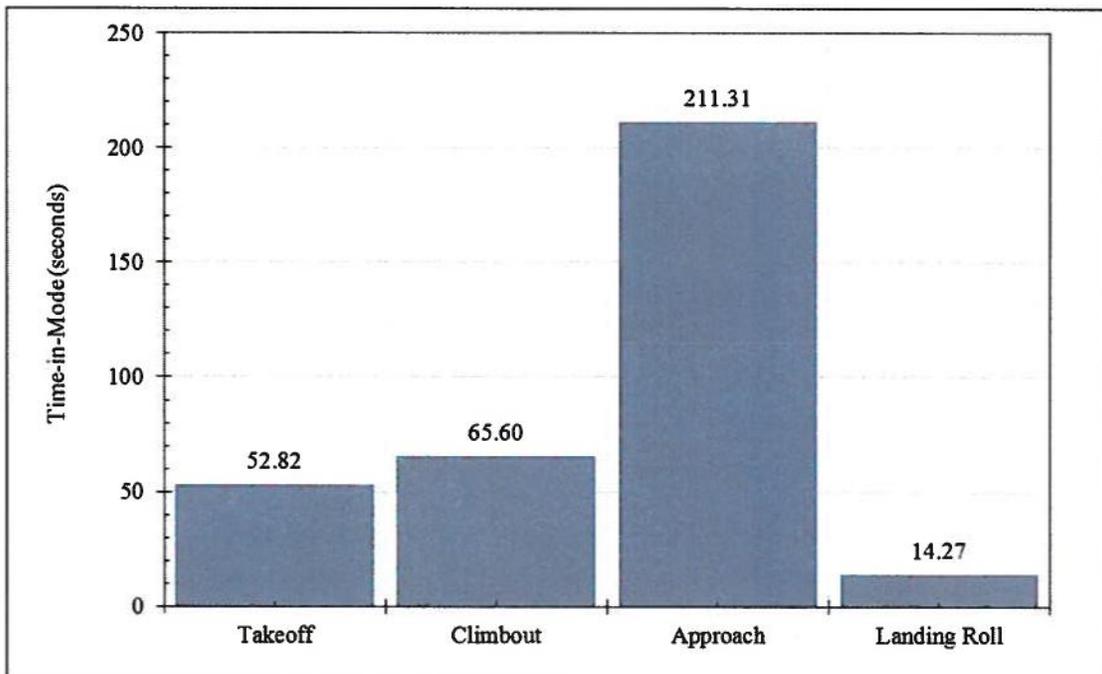


Figure 3a. Example EDMS (B747-400) Emission Rates by Second

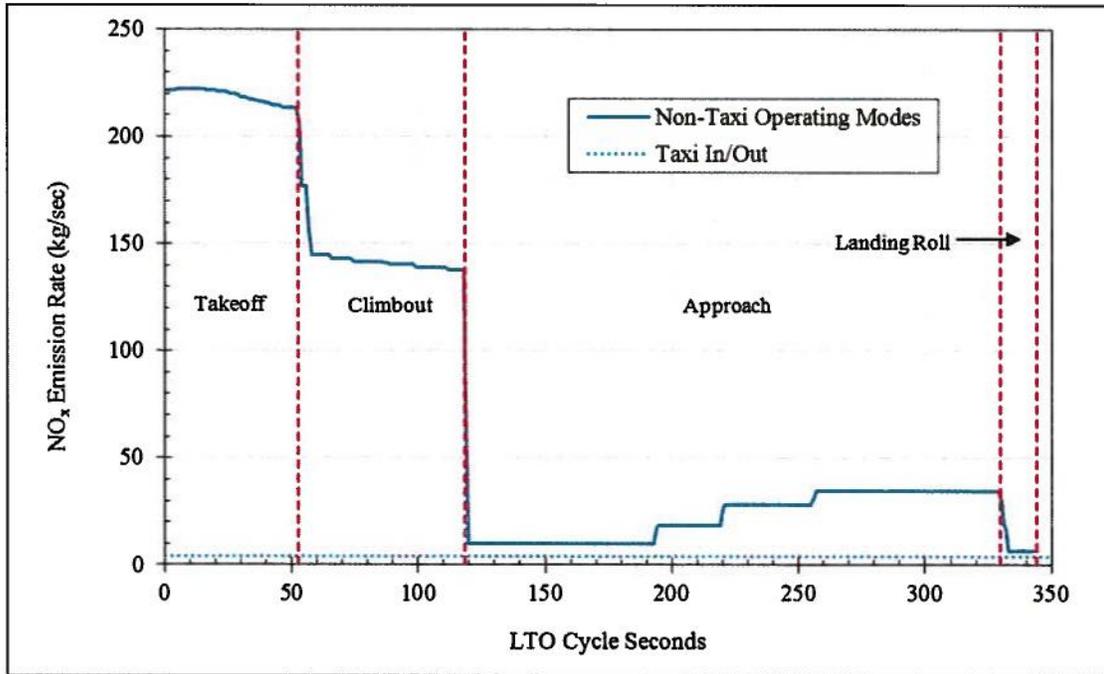


Figure 2a demonstrates that the duration of the entire landing roll operational mode is less than 15 seconds. The reverse thrust operation alone would generally endure for that entire period. Moreover, in Figure 3a, which depicts the second-by-second data for the aircraft operating modes, the transition from approach to landing roll operations clearly reflects the absence of any NO_x spike of any duration associated with the B747 landing roll.

The results are somewhat different for the B737. Figure 1b demonstrates a minor increase in landing roll NO_x from approach thrust, but this increase is far lower than the high thrust operations that would normally be expected from reverse thrust.

Figure 2b. Example EDMS (B737-800) Operational Mode Durations

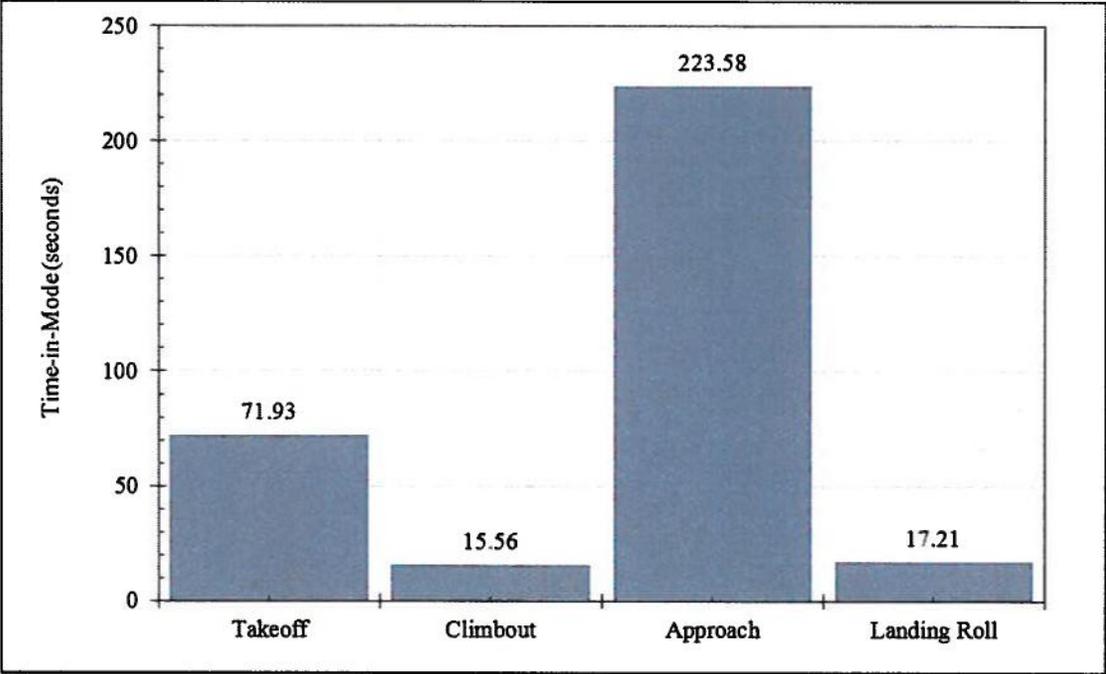
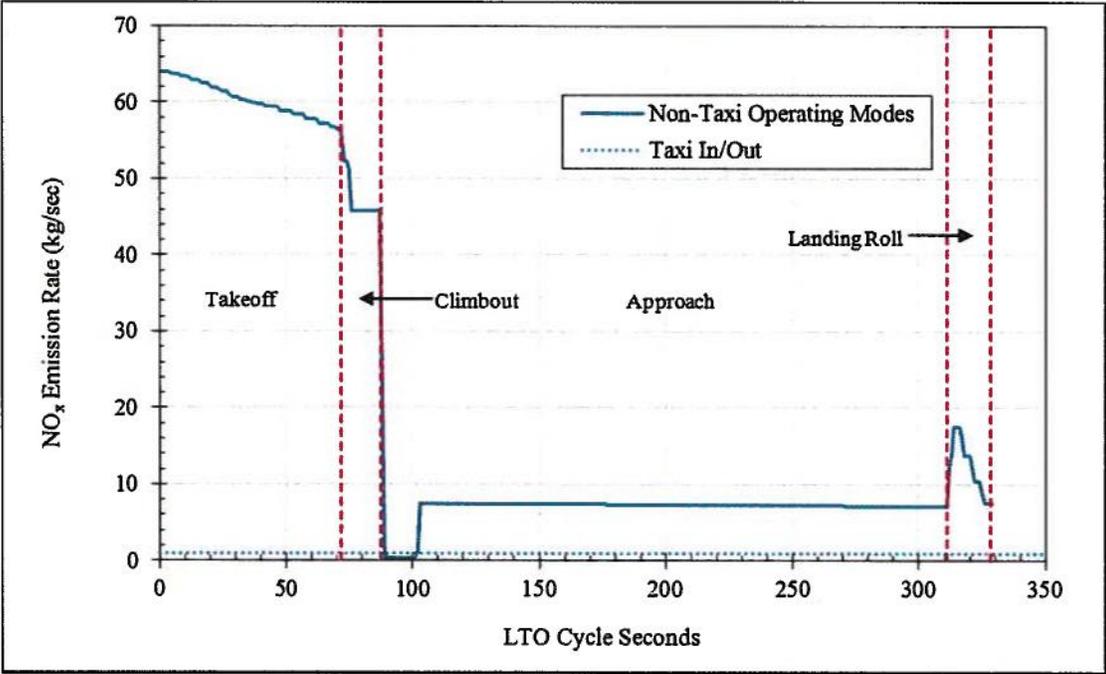


Figure 3b. Example EDMS (B737-800) Emission Rates by Second



Figures 2b and 3b show that, as was the case for the B747 example, the “muted” effect does not result from any landing roll averaging. In fact, the thrust increase is fairly constant across the complete 17 second landing roll, as depicted in Figure 4b.

Figure 4a. Example EDMS (B747-400) Relative Thrust (as NO_x) by Mode

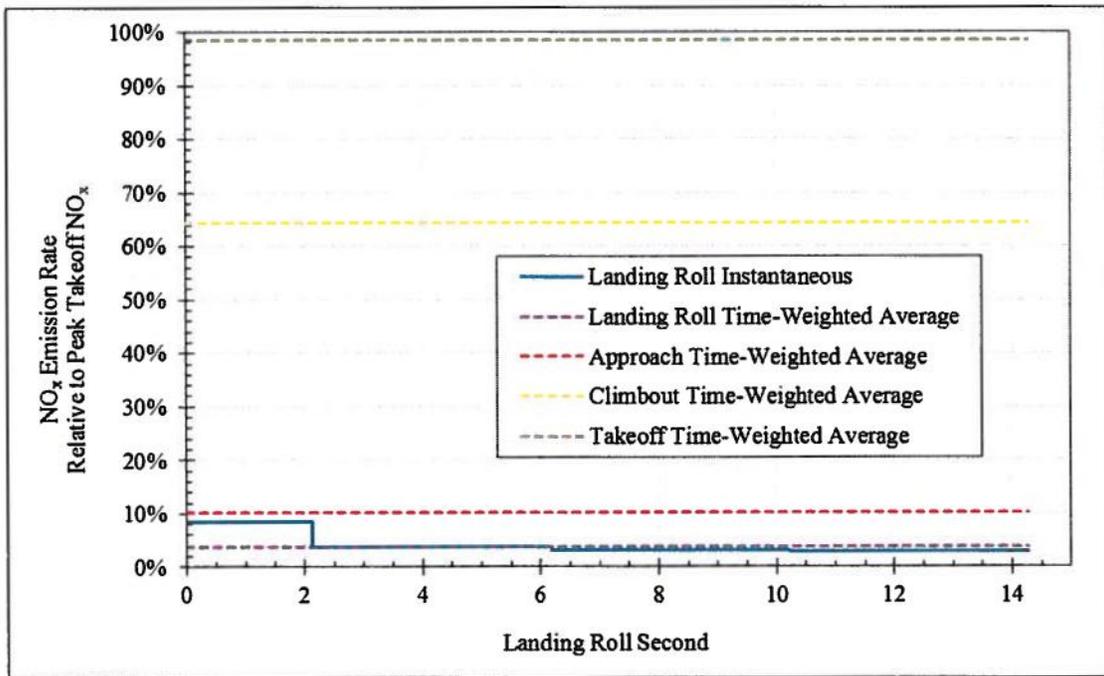
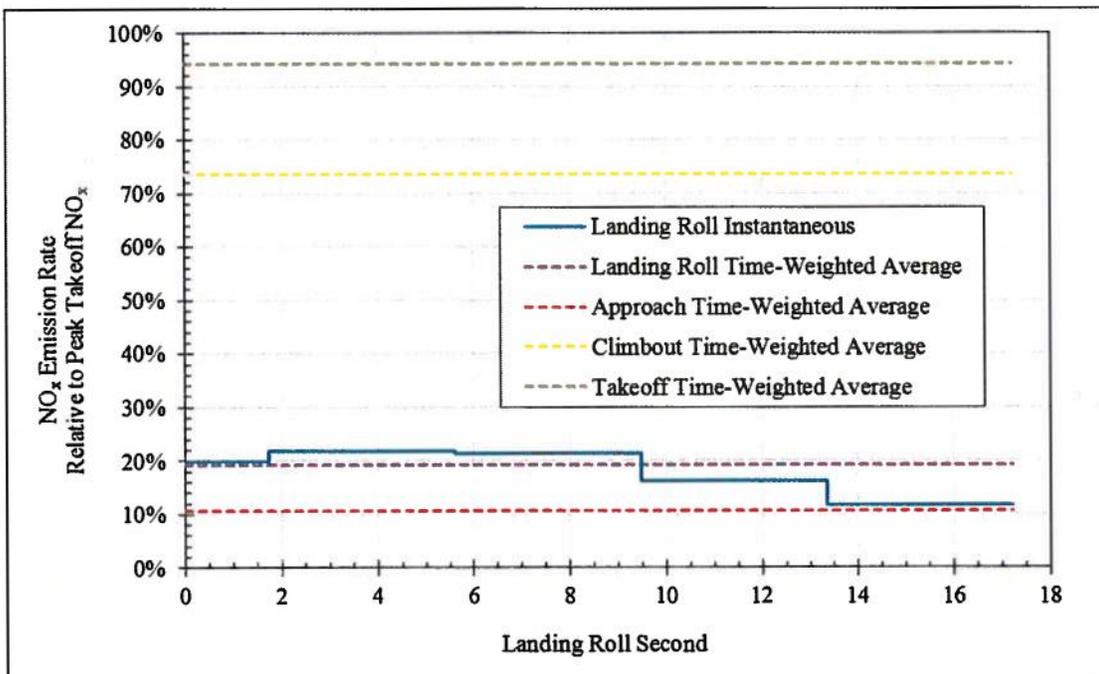


Figure 4b. Example EDMS (B737-800) Relative Thrust (as NO_x) by Mode



Figures 4a and 4b summarize the example results in terms of relative NO_x emissions rates across the four non-taxi operating modes. For these figures, mode specific NO_x is compared to peak takeoff NO_x on the premise that NO_x emissions rates are a reasonable surrogate for engine thrust conditions. As expected, takeoff and climbout thrusts are significant fractions of peak takeoff thrust. For the B747, Figure 4a demonstrates no reverse thrust operation during the landing roll. For the B737, Figure 4b, landing roll thrust is increased as would be expected during reverse thrust operations, but by a relatively modest amount.

From these calculations, it does not appear that EDMS properly accounts for reverse thrust operations. Accomplishing that task requires more than a User's Manual statement. Only a full review of the model algorithms and data sets would allow for any definitive determination of the EIR's analytic integrity. From the examples set forth above, it can be definitively stated that, if EDMS is modeling reverse thrust, the associated emissions are far lower than would be expected under FAA's guidelines for such modeling. As stated in FAA's "*Air Quality Procedures for Civilian Airports and Air Force Bases*," Appendix D, p. D-5, "[r]everse thrust is now considered by EPA as an official mode and should be included in calculation procedures as a sixth operating mode when applicable. Since reverse thrust engine operating conditions are similar to takeoff, time spent in reverse thrust should be combined with takeoff mode emissions indices and fuel flow as a means of accounting for reverse thrust mode emissions. Aircraft reverse thrust typically is applied for 15-20 seconds on landing." That these rules are not reflected in the EIR analysis calls into question the integrity of the EIR emissions calculations.

B. The Continuing Absence of Aircraft Engine Assignments From the FEIR Renders Its Air Quality Analysis, Like That in the DEIR, Incomplete

In its Response to Comment SPAS-AL00007-14, which addressed the absence of aircraft engine assignments in the DEIR's emissions estimation protocol, LAWA asserts that: (1) the data was provided in a list of applicable tables; and (2) EDMS provides "default engine selections for most aircraft types, and these defaults were used in the air quality impact analysis" [emphasis added]. This response is manifestly deficient for the following reasons.

First, the referenced tables provided in the DEIR list aircraft assumed in the analysis, not the engines associated with those aircraft. While the response states that "engine types used in the air quality impact analysis are directly tied to the aircraft fleet mixes," a statement of the obvious, it is actually an incomplete response. That is because each aircraft may use a variety of different engines, and the emissions profiles of each of those different engines may also differ dramatically. Therefore, a simple reference to aircraft type, without reference to the specific engine used on the aircraft, is an insufficient basis for calculating aircraft operating emissions.

Second, even if LAWA's statement were taken at face value, the public at which environmental review is aimed does not keep a spare copy of the EDMS lying around. If neither the DEIR nor FEIR provides the requisite information, the EIR's analysis cannot meet CEQA's

basis purpose of providing “sufficient information . . . to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d).

Third, the EIR does not specifically designate the engines used where no default engine assignment is made. Fourth, even where default engine selection is specified, neither the DEIR nor FEIR provides sufficient information to allow the public to ascertain if the engine assignments used remain appropriate in the face of continuing technological development. This is especially important as FAA voluntarily withdrew EDMS from the United States Environmental Protection Agency (“USEPA”) list for guideline models for air quality analysis in November, 2005, 70 Fed.Reg. 68,218. Therefore, since that time, EDMS has not been required to undergo non-FAA review and critique.

Finally, this absence of outside verification is evidenced in at least two errors in the EDMS model itself. First, startup emissions (for which EDMS estimates only hydrocarbon-based emissions) are underestimated because the model algorithm apparently does not account for the fact that startup emissions apply to more than one engine at a time. For the four engine B747, startup emissions are underestimated by 75%. For the two engine B737, startup emissions are underestimated 50%. Second, EDMS produces non-methane hydrocarbon (“NMHC”) emissions estimates that are greater than total hydrocarbon (“THC”) emissions. Since the former is a subset of the latter, this is not physically possible. Similar inconsistencies affect NMHC versus volatile organic compounds (“VOC”) emissions (NMHC is greater, which is also not possible), and NMHC versus total organic gas (“TOG”) emissions (NMHC is equal to TOG, which is not possible).

In short, given the palpable errors in the EDMS model, absent public scrutiny of the EDMS algorithms used in developing the emissions estimates in the EIR and the data resulting from the use of those algorithms, the results of the EIR’s analysis of operational emissions, entirely dependent upon broad references to EDMS, is, at best, inadequate.

C. The FEIR Similarly Omits Relevant Data Related to GSE and APU Emissions Estimation

The FEIR fills in some of the blanks left in the DEIR Ground Support Equipment (“GSE”) and Auxiliary Power Unit (“APU”) emissions estimates. What notably remains missing, however, is not the results of the GSE and APU emissions estimates, but the data and methodology used to arrive at these results. For example, the FEIR cites two California non-road emissions models (OFFROAD2011 and OFFROAD2007), yet provides no exemplar of the types of equipment assumed, the resulting emissions factors, or why associated emissions factors from the EDMS model are not used. In summary, the GSE and APU portions of the emissions analysis remains substantially under documented.

III. THE PROJECT'S SURFACE TRAFFIC IMPACTS ARE NOT FULLY EVALUATED OR DISCLOSED IN THE EIR

The FEIR's surface traffic analysis suffers from the same inadequacies as the analysis in the DEIR. For example, no effort was made to account for the fact that the geographic scope of the traffic analysis was determined only through a Memorandum of Understanding with the City of Los Angeles Department of Transportation, DEIR, p. 4-1184. The FEIR sets forth no supplement or addition to the MOU establishing that LAWA consulted with other surrounding jurisdictions such as Culver City or Inglewood in developing the scope of the EIR's surface traffic analysis.

Second, and perhaps as a consequence of LAWA's failure to consult with surrounding jurisdictions, the FEIR's, like the DEIR's, designated study area omits parts of Culver City northeast from Duquesne Avenue and does not include a substantial number of intersections along the northwestern portion of Culver City and western edge of Inglewood where these Cities intersect with the City of Los Angeles and the County of Los Angeles. Also due to the configuration of the study area, at least one substantial development project, the Metro Expo Line Extension roughly paralleling the arbitrary north boundary of the study area is not included in the analysis. Moreover, the part of Culver City that has been omitted is a critical transportation corridor where the current Expo Line terminal, Washington Boulevard, La Cienega Boulevard, Fairfax Avenue and Interstate 10 all come within close proximity.

Third, Culver City, like Inglewood, has prioritized the pedestrian infrastructure throughout the City. Increased traffic volumes at intersections within both Cities may create significant impacts to pedestrian access and safety, which issue is not addressed in the EIR's surface traffic analysis.

Further, LAWA's Response to Culver City's DEIR Comment SPAS-AL00007-33 concerning the absence of requisite mitigation of the Project's traffic impacts on Culver City is, at best, incomplete. While LAWA contends that "... a vote was taken to retain Culver City's existing thresholds of significance, rather than adopt the standard used by the City of Los Angeles," LAWA omitted the determination of the Culver City Planning Commission that "development projects outside Culver City shall use the thresholds for significant impact of other jurisdiction(s) when analyzing intersections in Culver City." Culver City Traffic Study Criteria, § 3(F), p. 15. This determination amounts to nothing more than that the standards of the jurisdiction in which the development is taking place, in this case Los Angeles, should be used where the impacts of development in Los Angeles cross jurisdictional lines and impact intersections in other communities, in this case Culver City.

Moreover, LAWA's reliance on the cited authority is misplaced. While CEQA Guidelines § 15064(b) assigns substantial discretion to the lead agency to determine standards of significance for environmental impacts, it does not empower that agency to ignore the standards applicable in affected jurisdictions. Similarly, in *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal.App.4th 477, 493 (2004), the court affirmed the lead agency's authority to

determine significance “depending on the nature of the area affected.” *Id.* The “nature of the area affected” necessarily encompasses the standards applicable within that “affected area.”

In addition, LAWA’s commitment to mitigate the traffic impacts on Culver City is seemingly reluctant, and, ultimately, inadequate. For instance, even though Culver City commented extensively on the Project’s impacts on the intersections of Overland/Sawtelle and Washington/Walgrove and the enhanced need for traffic signalization at those two locations, LAWA responded that it is “willing to pay a fair share contribution; however, there is an insufficient nexus to require LAWA to pay for the entire improvement, nor would such payment be roughly proportional to the impact caused by the SPAS alternatives.” LAWA goes on to claim that the impacts on the two intersections are a “cumulative impact” of the Project and that “[t]he majority of this cumulative impact is not caused by this SPAS alternative,” Response to Comment SPAS-AL00007-33, p. 4-198. It is Culver City’s position, however, that LAWA’s reliance on the assumption that the bulk of the impact would have occurred as a result of ambient growth in the region is unsupported by any evidence, let alone substantial evidence, Response to Comment SPAS- AL00007-33, p. 4-198; and therefore LAWA should pay its fair share for at least the costs of design, administration and construction of traffic signals and the required interconnection based on an assessed high percentage of increased traffic generated by the SPAS Project at each of those intersections.

Finally, LAWA is similarly reluctant to provide mitigation for the admittedly impacted intersections at Lincoln and Washington Boulevards. Culver City pointed out in its comments on the DEIR that an appropriate mitigation measure would be the contribution of funding to the SR90 connector road to Admiralty Way project which would serve as a “relief valve” to Lincoln Boulevard when it reaches capacity, and, thus, effectively mitigate the impacts of the SPAS Project on that intersection. LAWA responds, however, that because “[t]he necessary approvals [for the SR90 connector road to Admiralty Way project] from Caltrans and the City of Los Angeles have not been obtained,” Response to Comment SPAS-AL00001-1, p. 4-121, the SR90 connector is not an adequate mitigation measure. Contrary to LAWA’s supposition, however, the County of Los Angeles, which administers the SR90 connector road to Admiralty Way project, considers the connector road to be an active project as described on pages 11-10 and 11-11 of the Marina del Rey Land Use Plan, February 8, 2012. Caltrans has approved the project’s study report for the project. Therefore, at this point in time, the project is active pending availability of funds, and should be designated as a reasonable and feasible mitigation measure for the demonstrable impacts of the SPAS Project.

IV. THE PROJECT DEFINITION REMAINS NONSPECIFIC

LAWA admits that it did not define a “single proposed project in the SPAS Draft EIR,” Response to Comment SPAS-AL00007-6, p. 4-172, but argues, nonetheless, that its treatment of “alternatives” as projects is consistent with CEQA, because “the SPAS Draft EIR identifies the ‘whole of an action’ that would be associated with each alternative.” Response to Comment SPAS-AL00007-6, p. 4-172, quoting CEQA Guidelines § 15378.

As Cities/County previously discussed in detail in their comments on the DEIR, and as is illustrated by the “hybrid” of Alternative 1 initially chosen as the Preferred Alternative, identifying the “whole of an action” is precisely what the DEIR and FEIR do not do. Nowhere in either document was there an independent discussion of the potential impacts of combined Alternatives 1 and 9. Nor is there any discussion or analysis of the differential impacts of eliminating the bus routes originally contemplated under Alternative 1, and replacing them with a rail line as contemplated in Alternative 9. The synergistic impacts may be greater or less, but, in either event, must be disclosed.

Nor does the case of *California Oak Foundation v. Regents of University of California*, 188 Cal.App.4th 227 (2010) support LAWA’s position. In that case, the University of California designated the “integrated projects,” consisting of seven independent projects on the southeast quadrant of the University’s Berkeley campus as the “project” to be analyzed under CEQA. *Id.* at 241. It also designated five proposed alternatives, each of which contains some, but not all, of the components of the “integrated projects.” *Id.* at 274-275. Contrary to LAWA’s claim, the court upheld the University’s “‘integrated’ approach, comparing each alternative, including all of its components, to the Integrated Projects as a whole.” *Id.* at 276 [emphasis added]. In other words, while the alternatives may have varied in their composition, the project never did.

Here, on the other hand, what is now the designated Project, the combination of Alternatives 1 and 9, was never discussed in combination in the DEIR (apparently on the pretext that NEPA does not require the disclosure of a preferred alternative in a DEIR), let alone “in detail sufficient [to enable] the public to discern from the [EIR] the ‘analytic route the . . . agency traveled from evidence to action.’” *Id.* at 262, quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 515 (1974). For instance, it is impossible to discern from the discussions in either the DEIR or FEIR the differential impacts that will result from the changes to the ground transportation system, including the potential air quality impacts of the construction.

For all the above reasons, Cities/County continue to maintain that further environmental review of the combined Alternatives 1 and 9, the newly designated project, is required to fulfill CEQA’s mandate.

V. THE FEIR, LIKE THE DEIR, FAILS TO ADEQUATELY ANALYZE THE IMPACTS OF THE FULL RANGE OF ALTERNATIVES

The FEIR, like the DEIR, omits simulation modeling (“SIMMOD”) for Alternatives 5 through 7, on the ground “that the modeling results for Alternatives 5 through 7 would likely either fall within the range of, and/or be generally comparable to, the results for Alternatives 1 through 4.” Response to Comment SPAS-AL00007-8, p. 4-177. To support its position, LAWA cites CEQA Guidelines § 15151 to the effect that “evaluation of the environmental effects of a proposed project need not be exhaustive,” and “the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible.”

LAWA conveniently forgets to mention CEQA Guideline § 15126.6(d), requiring, among other things, that “[t]he EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” Instead, LAWA based its analysis on the purported similarity between Alternative 1 (proposing to move Runway 6L/24R 260 feet to the north) and Alternative 5 (proposing to move the runway 350 feet north). However, given the enormous increase in noise impacted population disclosed in the FEIR, as resulting from the Preferred Alternative, it is also reasonable to assume that moving the runway an additional 90 feet north would bring about some cognizable increase in the noise affected population which has not yet been disclosed, let alone analyzed. Moreover, Alternative 6 (movement of the runway only 100 feet north), was a recommendation made by Petitioners as part of the settlement of *City of El Segundo, et al. v. City of Los Angeles, et al.*, Riverside County Superior Court Case No. RIC426822, and was studied in depth during the early part of the SPAS process. It is hardly plausible that sufficient data does not already exist to make “reasonably feasible” a discussion of Alternative 6’s actual impacts instead of a mere second hand “conclusion” about them.

In short, while “the range of alternatives required in an EIR is governed by a ‘rule of reason,’” CEQA Guidelines § 15126.6(a) and (f), for those alternatives that are presented, which in this case also include Alternatives 5 through 7, “[t]he EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d). [Emphasis added.] That information is absent here, making the FEIR’s alternatives analysis as deficient as that of the DEIR.

VI. THE FEIR OBFUSCATES THE PROJECT’S LACK OF CONSISTENCY WITH THE LOS ANGELES COUNTY AIRPORT LAND USE PLAN

While the FEIR ultimately concludes that “[t]he LAWA Staff-Recommended Alternative would be consistent with the objectives of the Caltrans Handbook,” and, therefore, “impacts would be less than significant,” FEIR, § 2.3.9.1, p. 2-140, that conclusion is belied by the FEIR’s disclosures.

First, the FEIR 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. However, the FEIR 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 another turnaround, the FEIR 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.

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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 lead to an assembly of people. Advisory Circular 150/5300-13A, §310.a(2), p. 70, citing FAA Memorandum, Interim Guidance on Land Uses Within a Runway Protection Zone, dated 9/27/2012. Incorporating this standard into state law, Cal. Pub. Util. Code § 21001, *et seq.*, ("State Aeronautics Acts"), 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 and convenience of people on the ground," Advisory Circular 150/5300-13A, § 310.a(1), p. 70, its uses are determined entirely by Federal regulation.

Despite these clear legal mandates, the FEIR 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 5-story office building located at the northwest corner of Sepulveda Boulevard and Westchester Parkway," FEIR, § 2.3.7.2.1, p. 2-110. Nevertheless, the FEIR 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." FEIR, § 2.3.9.1, p. 2-140. This nonspecific mention of potential mitigation does not create consistency with Federal law, the Public Utilities Code or CEQA, and does nothing to eliminate the Project's manifest inconsistency with the derivative requirements of the Los Angeles County Airport Land Use Plan.

Cities/County appreciate this opportunity to comment and look forward to LAWA's serious consideration of, and action in response to, the above comments.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 

Barbara Lichman