

MEETING DATE: 05/28/13

AGENDA ITEM: Adoption of a Resolution Authorizing the Initiation of Impasse Appeal Proceedings with the Los Angeles County Airport Land Use Commission Relating to the City of Los Angeles' and Los Angeles World Airports' Approval of the Los Angeles International Airport Specific Plan Amendment Study Project and Certification of the Related Final Environmental Impact Report.

ATTACHMENTS

	<u>Pages</u>
1. Impasse Appeal	1-7
2. Proposed Resolution	8-9

BuchalterNemer
A Professional Law Corporation

18400 VON KARMAN AVENUE, SUITE 800 IRVINE, CALIFORNIA 92612-0514
TELEPHONE (949) 760-1121 / FAX (949) 720-0182

Direct Dial Number: (949) 224-6292
Direct Facsimile Number: (949) 224-6480
E-Mail Address: *blichman@buchalter.com*

May 20, 2013

VIA FACSIMILE ((213)626-0434), ORIGINAL TO FOLLOW BY U.S. MAIL

David W. Louie, Chair
Los Angeles County Department of Regional
Planning
Attn: Airport Land Use Commission (ALUC)
320 West Temple Street
13th Floor
Los Angeles, CA 90012

Re: Impasse Appeal by Cities of Culver City and Ontario, and County of San
Bernardino - Project No. R2013-00396-(2); Aviation Case No. 201300001 -
General Plan and Specific Plan Amendment Project (City of Los Angeles)

Dear Mr. Louie:

The Cities of Culver City and Ontario, and County of San Bernardino ("Cities/County") have reached an impasse with the City of Los Angeles and Los Angeles World Airports (collectively "LAWA") regarding the Los Angeles International Airport ("LAX") Specific Plan Amendment Study Project ("SPAS Project"). Pursuant to the California State Aeronautics Act, Cal. Pub. Util. Code § 21670.2(a), and the "Los Angeles County Airport Land Use Commission Review Procedures," Cities/County hereby submit this Impasse Appeal to the Los Angeles County Department of Regional Planning, sitting as the Los Angeles County Airport Land Use Commission ("ALUC"). This appeal is based on: (1) LAWA's failure to submit to the ALUC, and the ALUC's failure to consider, the entire SPAS Project when determining its consistency with the Los Angeles County Airport Land Use Compatibility Plan ("ALUCP"); (2) the ALUC's consequent failure to consider the SPAS Project's manifest inconsistency with the ALUCP's policies governing, among other things, structural incursions into the protected area at the east end of the LAX North Airfield, denominated the Runway Protection Zone or RPZ, inclusion of large "assemblies of persons," in the RPZ in patent violation of ALUCP policies and the Federal law that governs them, Cal. Pub. Util. Code § 21240 ["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 (Caltrans) the power to so regulate and control safety factors in the operation of aircraft or to control use of the airways"], and LAWA's failure to mitigate these patent violations of state law and the ALUCP itself.

I. PROCEDURAL HISTORY

In 1991, the ALUCP for LAX was adopted.¹ In 2004, Los Angeles proposed a new Airport Master Plan for LAX accompanied by a joint State Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act, Cal. Pub. Util. Code § 21000, *et seq.*, ("CEQA") and Federal Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, ("NEPA"). During the same period, the ALUC reviewed the LAX Airport Master Plan for consistency with the ALUCP, and found the Airport Master Plan inconsistent with the ALUC policies governing safety impacts of increased airport capacity and regionalization of aviation demand. Also in 2004, the Los Angeles City Council overruled the ALUC determination of inconsistency by a two-thirds vote, pursuant to Cal. Pub. Util. Code § 21676.5.

In 2005, the County of Los Angeles and the City of El Segundo filed an Impasse Appeal concerning certain aspects of the LAX Airport Master Plan. Disagreement was in the areas of measuring airport capacity, the need to develop a regional approach to airports, noise, safety and security. The ALUC heard the impasse at an appeal hearing and upheld the appeal in the areas of measuring airport capacity and the need to develop a regional approach to airports, and denied the appeal in the areas of noise safety and security.

Also in 2005, the County community group, Alliance for a Regional Airport Solution to Airport Congestion ("ARSAC") and the Cities of El Segundo, Inglewood, and Culver City ("Petitioners") filed a legal challenge under CEQA to the Los Angeles City Council's adoption of the joint EIR/EIS for the LAX Airport Master Plan. Later that year, the parties settled the legal challenge through a Stipulated Settlement which required, among other things, that: (1) Petitioners withdraw the Impasse Appeal; (2) future LAX projects, identified in the Master Plan as "Yellow Light" projects, be evaluated through a subsequent study, the Specific Plan Amendment Study ("SPAS"); and (3) full CEQA review be undertaken at the conclusion of the SPAS. In 2006, LAWA commenced the process of developing alternatives for inclusion in the SPAS. The final SPAS EIR and accompanying "SPAS Report" included nine alternatives that could be mixed and matched to achieve the final project. No preferred alternative was designated.

On February 5, 2013, the LAX Board of Airport Commissioners ("BOAC") certified the SPAS EIR and selected Alternative 1, which was predicated upon airfield improvements, including the movement of the northernmost runway, Runway 6L/24R, 260 feet to the north, with an associated movement of the RPZ, with resulting inclusion of several populated structures (collectively, the "Airfield Improvements"). The SPAS Project also included a number of administrative amendments to portions of the City of Los Angeles General Plan including: (1) the LAX Specific Plan; (2) the Land Use Element, including the LAX Plan and the Westchester/Playa de Rey Community Plan; (3) the Transportation Element; and (4) the Noise Element. Those subsidiary plan documents ("Plan Amendments") were offered merely for the

¹ The document was titled, at that time Los Angeles County Comprehensive Land Use Plan.

purpose of memorializing the Airfield Improvements which are the gravamen of the SPAS Project.

II. CITIES/COUNTY HAVE STANDING TO PROSECUTE AN IMPASSE APPEAL

As Cal. Pub. Util. Code § 21670.2(a) applies only to the County of Los Angeles, the ALUC has promulgated the "Los Angeles County Airport Land Use Commission Review Procedures (December 2004)" ("Review Procedures") which govern appeals to the ALUC. Review Procedures, § 5. Review Procedures § 5.2.1 set forth the basic requirements for standing to appeal.

First, an appeal may be brought by "[a]ny public agency involved in an impasse over the airport planning of another public agency, where the airport or the airport's planning area boundary extends into the County of Los Angeles." A "public agency" is defined as "[a] county, city, school district, or other governmental body." Review procedures, § 1.2.22. Second, the matter appealed must pertain to "[a]ny significant unresolved issue between the appellant public agency and the public agency proposing the project regarding proper airport planning as it relates to the project at issue." Review Procedures, § 1.2.16. Third, the "public agency" must "demonstrate that it has, at a minimum, participated in the airport planning process and has expressed its concerns to the public agency governing body regarding the airport planning project." Review Procedures, § 5.2.1. Cities/County have met all three prongs of the test.

First, there can be no disagreement that Cities/County meet the review procedures' definition of "public agency;" that the matters appealed relate to the still unresolved issues of project definition and ALUC safety and regionalization policies created by the SPAS Project. Nor can it be disputed that Cities/County have fully participated in, and communicated their positions concerning, the SPAS Project, to various agencies, commissions and representatives of the City of Los Angeles. *See, e.g.*, Comments of the Cities of Inglewood, Culver City, Ontario and County of San Bernardino on Draft Environmental Impact Report, October 10, 2012 (attached to this Impasse Appeal as Exhibit A), and Comments of Cities of Inglewood, Culver City, Ontario and County of San Bernardino on the Final Environmental Impact Report, March 8, 2013 (attached to this Impasse Appeal as Exhibit B). In addition, representatives of Cities/County appeared at the meeting of the Los Angeles Board of Airport Commissions on February 5, 2013; the Los Angeles Planning Commission on February 14, 2013; the ALUC on March 27, 2013; and the Joint Meeting of the Los Angeles City Council Planning and Land Use Management Committee and Trade, Commerce and Tourism Committee on April 9, 2013. It is equally indisputable that the matters appealed relate to the SPAS Project which involves LAX, the planning boundaries of which lie comfortably within the County of Los Angeles.

III. THE IMPASSE

In Public Utilities Code section 21670, the California Legislature declared the purpose of the California Aeronautics Act. "It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as

to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.” *Id.* at § 21670(a)(1). In addition, “[i]t is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.” *Id.* at § 21670(a)(2).

To ensure that these purposes are achieved, the Public Utilities Code requires that each county with an airport serviced by a scheduled airline establish an airport land use commission. Cal. Pub. Util. Code § 21670(b). Each commission is responsible for formulating, “an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.” Cal. Pub. Util. Code § 21675(a). In addition, airport land use commissions must, among other things, review the plans of local agencies to determine whether those plans are consistent with the county’s ALUCP. Cal. Pub. Util. Code § 21674(d).

Here, pursuant to LAWA’s limited application for review, the ALUC reviewed not the entire SPAS Project, the genesis of the impacts on the “general health and welfare” that the ALUC is charged with protecting, but only a number of Plan Amendments memorializing planned changes to the airfield, amendments which would have been entirely unnecessary absent the underlying comprehensive plan for the airfield. Cities/County disagree with the narrow scope of the ALUC’s review of the project; its determination of consistency for just the supporting ancillary plans, made at LAWA’s behest; its decision to ignore the SPAS Project’s manifest violations of the ALUCP; and ultimately with a finding that the Project is consistent with the requirements of the ALUCP. Cities/County have therefore reached an impasse with LAWA regarding the SPAS Project.

A. LAWA and the ALUC Impermissibly Segmented the SPAS Project in Order to Create Consistency with the ALUCP

The SPAS Project is a comprehensive land use project providing the blueprint for the Airfield Improvements. The FEIR defines the

“key features of the LAWA Staff-Recommended Alternative [to] include:

- ◆ Relocation of Runway 6L/24R 260 feet north
- ◆ Construction of a centerline taxiway
- ◆ Easterly extension of Runway 6R/24L
- ◆ Improvements to north airfield taxiways
- ◆ Development/redevelopment/extension of Terminal 0, Terminal 3, Tom Bradley International Terminal, and the future Midfield Satellite Concourse

- ◆ 153 passenger gates
- ◆ Development of an Intermodal Transportation Facility (ITF), Consolidated Rent-A-Car Facility (CONRAC), and parking outside the Central Terminal Area (CTA)
- ◆ Construction of an Automated People Mover (APM) to link new facilities to the CTA and provide connectivity with planned Metro facilities.”

FEIR, § 2.1.1, p. 2-1.

In an apparent effort to minimize the magnitude of the SPAS Project’s potential impacts on “the general welfare of the inhabitants within the vicinity of the airport,” Cal. Pub. Util. Code § 21675, and, thus make a finding of consistency possible, LAWA submitted only the Plan Amendments to the ALUC for a determination of consistency, rather than the SPAS Project as a whole. Thus, in making its determination of consistency, the ALUC admittedly and purposefully ignored the Airfield Improvements that are the heart of the SPAS Project, *see, e.g.*, FEIR, § 2.1.2, p. 2-2, and the only reason the Plan Amendments were required in the first instance. Because the Airfield Improvements are an identity with the SPAS Project, and, because the Plan Amendments merely document the existence of the Airfield Improvements, the consistency of the SPAS Project with the ALUCP cannot be adequately evaluated without also evaluating the characteristics and impacts of the Airfield Improvements themselves.

In this regard, Cal. Pub. Util. Code § 21676(c) provides that a public agency owning an airport “shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission.” Here, the SPAS Project is a comprehensive change to the Airport Master Plan that cannot be considered except as a whole. Similarly, Section 5.3.1 of the California Airport Land Use Planning Handbook addresses “the obligations of local agencies with regard to submitting land use projects . . . for the commission’s review.” Here, LAWA defied the clear expectation that a single project would be submitted to the ALUC as a whole, and not divided into segments, with each segment submitted separately at a different time, in an effort to minimize the potential environmental impacts of each submission.

B. The ALUC Impermissibly Failed to Consider the Inconsistency between the SPAS Project as a Whole and the ALUCP’s Policies Governing Structural and Population Incursions into the RPZ.

The Plan Amendments evaluated by the ALUC are derived entirely from the Airfield Improvements which include the relocation of Runway 6L/24R 260 feet northward. *See, e.g.*, DEIR, § 2.2, p. 2-1. The relocation of Runway 6L/24R “shift[s] the associated RPZ northward by that same amount, which would extend over existing developed uses near the east end of the runway that are not currently within the existing RPZ.” Final EIR, § 2.3.7.2.1, p. 2-111. While the FEIR acknowledges that “[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,” FEIR, § 2.3.7.2.1, p. 2-117, it nevertheless claims, without a scintilla of documentary

BuchalterNemer

David W. Louie, Chair

May 20, 2013

Page 6

support, that the runway realignment “is not considered to pose a significant safety hazard compared to baseline conditions.” *Id.*

In ignoring the FEIR’s acknowledgment of the Project’s safety impacts, LAWA and the ALUC apparently forget both State and Federal law governing uses in the vicinity of airports, as well as the provisions of the ALUCP. 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 impracticable, airport owners, as a minimum, should 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 of Land Uses Within a Runway Protection Zone, 9/27/2012.

Incorporating this standard into state law, the Public Utilities Code, 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 to people on the ground,” Advisory Circular 150/5300-13A, § 310.a.(1), p. 70, its appropriate uses are designated entirely by Federal law and regulation. Last, but certainly not least, the ALUCP is clear concerning the prohibition of any occupancy of the RPZ. “[The RPZ] is the most critical safety area under the approach path and should be kept free of all obstructions. No structure will be permitted nor the congregation of people allowed within this zone.” ALUCP, § III, Safety, p. 9.]

Despite these clear legal mandates, LAWA’s implementation of the Airfield Improvements will add 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.” *Id.* Moreover, the new approach surface for Runway 24R mandated in FAA’s regulation, 14 C.F.R. Part 77, and incorporated into the ALUCP by reference, now 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, which was not formerly included in the RPZ. As the ALUC is obligated to follow the mandates of Federal law, and that law, as well as the ALUCP, require the maintenance of a clear RPZ to the extent legally allowable, LAWA’s request for a determination of consistency on only derivative aspects of the full project, as well as the ALUC’s sanctioning of addition incursions into the RPZ are clearly inconsistent with the policies of the ALUCP and the Federal mandate upon which they are based.

Finally, and despite the clear violations of both Federal law and its own ALUCP, by finding consistency with only the plan amendments, and failing and refusing to consider the Airfield Improvements that give rise to them and are their *raison d’etre*, the ALUC

6

BuchalterNemer

David W. Louie, Chair

May 20, 2013

Page 7

impermissibly sanctions LAWA's failure to provide mitigation of these clearly substantial safety violations. "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, as well as its rejection, is not only inconsistent with the ALUCP's policies, but flies in the face of both Federal and State law, and requires the appropriate exercise of the ALUC's discretion to find the SPAS Project inconsistent with the ALUCP.

IV. CONCLUSION

For all the foregoing reasons, Cities/County respectfully requests that the ALUC set a hearing and grant this Impasse Appeal, finding the SPAS Project inconsistent with the governing ALUCP.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By



Barbara Lichman

ATTACHMENT 2

RESOLUTION NO. 2013-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, AUTHORIZING THE INITIATION OF IMPASSE APPEAL PROCEEDINGS WITH THE LOS ANGELES COUNTY AIRPORT LAND USE COMMISSION RELATING TO THE CITY OF LOS ANGELES' AND LOS ANGELES WORLD AIRPORTS' APPROVAL OF THE LOS ANGELES INTERNATIONAL AIRPORT SPECIFIC PLAN AMENDMENT STUDY PROJECT AND CERTIFICATION OF RELATED FINAL ENVIRONMENTAL IMPACT REPORT.

WHEREAS, on April 30, 2013, after a lengthy process during which the City of Culver City ("City") submitted extensive public comments in opposition, the Los Angeles ("LA") City Council approved the Specific Plan Amendment Study project ("SPAS Project") related to the proposed expansion at Los Angeles International Airport ("LAX") and certified the related Final Environmental Impact Report ("FEIR"); and

WHEREAS, the approval of the SPAS Project by the LA City Council was preceded by the LA City Planning Commission's recommendation of approval and the Los Angeles County Airport Land Use Commission's ("ALUC") finding that the SPAS Project is consistent with the LA County Airport Land Use Compatibility Plan ("ALUCP"); and

WHEREAS, the City's comments and testimony during this process concluded that the FEIR is inadequate because, among other things, the SPAS Project is not consistent with the ALUCP; and

WHEREAS, the City desires to challenge ALUC's determination that the SPAS Project is consistent with the ALUCP by the filing of an Impasse Appeal.

NOW, THEREFORE, the City Council of the City of Culver City, DOES HEREBY RESOLVE as follows:

1. The City Council authorizes the initiation of Impasse Appeal proceedings with the Los Angeles County Airport Land Use Commission relating to the

8

1 City of Los Angeles' and Los Angeles World Airports' approval of the Los Angeles
2 International Airport Specific Plan Amendment Study project and certification of the
3 related Final Environmental Impact Report.

4 2. The City Council hereby authorizes the City Attorney, or designee,
5 in consultation with the City Manager, to execute and submit all documents including,
6 but not limited to applications, memorandums and legal briefs, which may be necessary
7 for the Impasse Appeal process.

8 3. The City Clerk shall forward a certified copy of this Resolution to
9 the Los Angeles County Airport Land Use Commission.

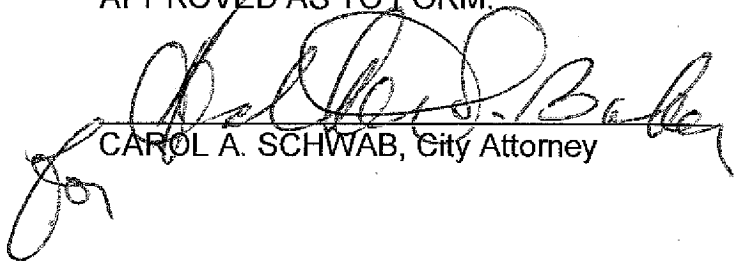
10
11 APPROVED and ADOPTED this _____ day of May, 2013.

12
13 _____
14 JEFFREY COOPER, MAYOR
City of Culver City, California

15
16 ATTEST:

17 APPROVED AS TO FORM:

18 _____
MARTIN R. COLE City Clerk

19 
CAROL A. SCHWAB, City Attorney

20
21
22
23
24
25
26
27
28
A13-00276