

ARIOS, JUSTIN

From: Jim Fitzpatrick <jimfitzeco@gmail.com>
Sent: Monday, November 29, 2021 11:29 AM
To: Housing Element
Subject: Housing Element Question

How does the significant increase in density, housing units and corresponding people (42% Projected Increase) impact Utilities?

I am reviewing CMSD's Rate Increase study.

[https://go.boarddocs.com/ca/cmsdca/Board.nsf/files/C8FLNF575656/\\$file/Wastewater%20Rate%20Study%20Presentation.pdf](https://go.boarddocs.com/ca/cmsdca/Board.nsf/files/C8FLNF575656/$file/Wastewater%20Rate%20Study%20Presentation.pdf)

I do not see any reference to the City's plan to add 12,000 to 17,000 new housing units and 42% Population Increase.

Did CMSD send you any analysis? If so, can I get a copy?

Where can I find where the City has studied this issue relative to Solid Waste and Sewer, and the justification of no impacts?

2021=29 HEU Initial Study - Mitigated Neg Dec

On page #113, it states a planned 42% Increase in Population

It references the below CMSD Strategic Plan

There is no such study as referenced

The word "growth is used only once on page 6

<http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2021/2021-11-08/PH-2-Att-ISMD.pdf>

CMSD Strategic Plan

https://cms9files.revize.com/cmsd/Document_Center/Governance/Policies/2020_2025_strategic_plan.pdf

I reviewed CMSD's Strategic Plan, page #14 does not consider increase in demand

42% Population would increase consumption and therefore trash levels

All the MND does is sites unfunded State Mandates to hit arbitrary percentage numbers

It does not speak to the absolute trash increasing based on the substantial increase in population.

It does not contemplate the acceleration of filling our land fill. As the absolute number substantially increasing trash will accelerate the filling of the Land Fill. How could it not

Cheers,

Jim Fitzpatrick
Solutioneer

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AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

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

November 29, 2021

Attn: Development Services, Planning Division
c/o Justin Arios, Associate Planner
77 Fair Drive
Costa Mesa, CA 92626

Subject: NOI to Adopt Negative Declaration (ND) for Costa Mesa Housing Element Update (2021-2029)

Dear Mr. Arios:

Thank you for the opportunity to review the City of Costa Mesa Initial Study to adopt a Negative Declaration for the proposed Housing Element Update in relation to the *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)*. The City of Costa Mesa is located within the Federal Aviation Administration (FAA) Federal Aviation Regulation Part 77 Notification Area (also known as the airport planning area). In addition, parts of the City are located within the noise contours, the safety zones and the Obstruction Imaginary Surfaces for JWA.

The Draft Housing Element includes a site inventory assessment, which identifies sites that can achieve the City's assigned 2021 Regional Housing Needs Assessment (RHNA) for the 2021-2029 planning period. The Draft Housing Element identifies 99 parcels within a variety of zones, specific plan areas, urban plans, and overlays. The proposed site inventory includes new residential sites within the Notification Area, which requires submittal to the Airport Land Use Commission for a consistency review.

The Draft Housing Element proposes new residential sites within the conical and horizontal obstruction imaginary surfaces for JWA. The ND should discuss the maximum building heights allowed for these areas. With respect to building height restrictions, development proposals which include the construction or alteration of structures more than 200 feet above ground level require filing with the Federal Aviation Administration (FAA) and ALUC notification. Projects meeting this threshold must comply with procedures provided by Federal and State law, with the referral requirements of ALUC, and with all conditions of approval imposed or recommended by FAA and ALUC including filing a Notice of Proposed Construction or Alteration (FAA Form 7460-1). Depending on the maximum building heights that will be allowed per the proposed Housing Element Update, the City may wish to incorporate a mitigation and condition of

approval specifying the 200 feet height threshold within the ND and proposed Housing Element.

It appears that a number of the sites are located within the 60 dB CNEL contour for JWA. Per the *AELUP for JWA*, it is strongly recommended that residential units be limited or excluded from this area unless the sound attenuation provided is sufficient to ensure that interior noise levels do not exceed 45 dBA. The ND should also discuss if any of the proposed residential opportunity sites fall within the Safety Zones for JWA. *Appendix D of the AELUP for JWA* contains the JWA Safety Zone Map for your reference.

A referral by the City to the ALUC is required for this project due to the location of the proposed housing sites within AELUP Planning Area for JWA and due to the nature of the required City approvals (i.e. Housing Element Update/General Plan Amendment) under PUC Section 21676(b). Please note that the Commission requests that referrals be submitted to the ALUC for a determination between the Local Agency's Planning Commission and City Council hearings. Since the ALUC meets on the third Thursday afternoon of each month, complete submittals must be received in the ALUC office by the first of the month to ensure sufficient time for review, analysis, and agendaing. The Housing Element Submittal form can be found at:

<https://www.ocair.com/about/administration/airport-governance/commissions/airport-land-use-commission/>

Thank you for the opportunity to comment on this initial study. Please contact Julie Fitch at (949) 252-5170 or jfitch@ocair.com if you have any questions.

Sincerely,



Lea Choum
Executive Officer

November 29, 2021

Attention: Development Services, Planning Division
c/o Justin Arios, Associate Planner
77 Fair Dr.
Costa Mesa, Ca. 92626

Subject: Mitigated Negative Declaration, Housing Element Update (SCH 2021110014)

I have reviewed the Mitigated Negative Declaration for the City of Costa Mesa 2021-2029 6th Cycle Housing Element Update (SCH 2021110014) and have the comments below. In general, I am disappointed and dismayed at the cursory approach to protecting our Costa Mesa environment reflected in the document.

The Project

Review of the MND and attached Initial Study (IS) is hindered by a poor project description. The MND fails to clearly and accurately define the project. As stated in *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (202 Cal.App.3d 1136, 1143; 249 Cal.Rptr. 439), “An accurate project description is necessary for an intelligent evaluation of potential environmental effects of a proposed activity”. In setting aside the approval of an EIR by the City of Los Angeles for water development facilities in Inyo County, the court stated: “An accurate, stable and finite project description is the most basic and important factor in preparing a lawful EIR” (*County of Inyo v. City of Los Angeles* (71 Cal.App.3d 193) [139 Cal.Rptr. 401]).

A vague or ambiguous project description will render all further analyses and determinations ineffectual. It is critical that the project description be as clear and complete as possible so that the issuing agency and other responsible agencies may make informed decisions regarding a proposed project. Without a clear definition of the activities to be undertaken, the environmental document becomes useless. The CEQA process cannot ensure that all impacts have been mitigated to the extent feasible, because the ultimate extent of project activities is not stable and finite but is potentially unstable and infinite, contrary to the requirements of CEQA.

The proposed project identifies various sites citywide where housing would be “facilitated”. As represented in the MND, the proposed project is merely a policy document which would not actually result in any real construction and associated impacts. However, under current housing element law, identified sites must be re-zoned to accommodate the Regional Housing Needs Assessment (RHNA), and denial of housing on sites identified in a housing element is becoming increasingly difficult.

The courts long ago established that the appropriate time for environmental review is not when building permits are about to be issued, but when development is first “facilitated”. The City is reminded that, in accordance with Guidelines Section 15004(b), an environmental document is to be prepared as early as feasible in the planning process. Per *Laurel Heights Improvement*

Association of San Francisco, Inc. v. The Regents of the University of California (1988) 47 Cal. 3d 376):

...the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project.

Thus, many local agencies are preparing full program EIRs for their housing element updates. These include local communities like Newport Beach and Huntington Beach as well as larger cities like Los Angeles.

As stated in the MND, the project would facilitate the development of up to 17,531 dwelling units on numerous sites citywide. The MND fails to accurately identify how many of the 17,531 dwelling units would be permitted under current planning and zoning and how many would require a general plan or zoning amendment.

The material presented is misleading and inaccurate. The MND states that the total capacity of existing sites would be 6,310, reflected in “the [not specifically referenced] table”. That may well be, but Table 2-7, presumably the table referenced shows dwelling units beyond those currently allowable on what are being called “existing sites”. For example, the existing General Plan Land Use Element would permit up to 582 dwellings at Fairview Hospital, but Table 2-7 shows 2,300 units at that location. As stated in the General Plan Land Use Element:

The Home Ranch site has a site-specific FAR of 0.64 for office development; residential development is not permitted due to the site-specific FAR (p. LU 27).

and

Although the Planned Development Commercial zoning may allow mixed-use development (i.e., housing as a complementary use), housing is not permitted on this property due to its location. (p. LU-46)

Under the North Costa Mesa Specific Plan 192 dwellings are permitted in the area north of South Coast Drive east of Susan. By contrast, Table 2-7 indicates that 2,215 units would be provided at Home Ranch.

The MND asserts that there are no dwellings currently pending in the City (Table 2-7) in the period subsequent to “June 31[sic], 2021”. Yet, approximately 200 dwellings are currently under construction at the Costa Mesa Motor Inn site and would be anticipated to become available for occupancy during the housing element cycle. Numerous units at other, smaller sites under construction, such as the Harbor Hamilton site, are similarly overlooked.

Oddly, over one thousand units at the One Metro West site are similarly overlooked; the site is neither included as under construction nor mapped on the site inventory. Has this project been abandoned by the applicant? No sites within the Newport Boulevard Specific Plan area or overlays are included in the inventory, though conversion to residential uses has occurred and continues to occur along this corridor.

While it is not required that every site be included in the housing element sites inventory, one has cause to wonder why massive amendment to existing planning and zoning would be proposed when sites already permitting substantial numbers of units are ignored. In any case, allowable

units on all sites must be included in any analysis of cumulative impacts, which must include past, present and reasonably foreseeable, probably future projects under CEQA.

The Process

In accordance with Section 21080(d) of the California Environmental Quality Act:

If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

Section 21080(e) defines “substantial evidence” as follows:

(1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, **or** [emphasis added] expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

As stated in *Citizens for Responsible & Open Government v. City of Grand Terrace*, (2008) 160 Cal. App. 4th 1323:

CEQA provides that generally the governmental agency must prepare an EIR on any project that may have a significant impact on the environment. (§§ 21080, subd. (d), 21100, subd. (a), 21151, subd. (a); *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 570–571 [80 Cal. Rptr. 2d 294], quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601–1602 [35 Cal. Rptr. 2d 470].) Whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment, an EIR normally is required. (§ 21080, subd. (c)(1); *Guidelines*, § 15070, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399 [43 Cal. Rptr. 2d 170]; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 [21 Cal. Rptr. 3d 791] (*Pocket Protectors*)). “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR...

A mitigated negative declaration is one in which “(1) the proposed conditions ‘avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.’ (§ 21064.5, italics added.)” (*Architectural Heritage Assn. v. County of Monterey, supra*, at p. 1119; see also *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1167 [44 Cal. Rptr. 2d 288].)

As stated in *Pocket Protectors, v. City of Sacramento* (2004) 124 Cal. App. 4th 903:

Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may “weigh” conflicting substantial evidence to determine whether an

EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: “if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil*, *supra*,] 13 Cal.3d 68).” Thus, as *Claremont* itself recognized, “Consideration is not to be given contrary evidence supporting the preparation of a negative declaration. (*City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229, 244–245 [227 Cal. Rptr. 899]; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal. App. 3d 988 [165 Cal. Rptr. 514].” (*Claremont, supra*, 37 Cal.App.4th at p. 1168.)

It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project. (See *No Oil, supra*, 13 Cal.3d at p. 85.)

Adoption of a Mitigated Negative Declaration is inappropriate in this case inasmuch as the clear potential for significant adverse impacts on the environment exists. These include but are not limited to impacts on aesthetics, air quality, biological resources, energy, land use, noise, recreation, public safety, and circulation.

Conclusions Absent Analysis

Overall, the MND lacks analysis to support findings of “no impact”. The materials on-line include no references to any technical reports or contact with specific service providers which may support the findings. While published reports are cited, these are all reports based on future needs anticipated under the existing general plan, not the proposed 41.9 percent increase in population.

Even where some nominal degree of justification for a conclusion is provided, it is based on fallacious reasoning. For example, it is asserted that only 61.5 acres of new impervious surfaces will occur, apparently based on the 61.5 acres now existing on three vacant sites. However, intensification of use on the other ninety some sites projected for redevelopment may result in significantly increased impervious surfaces at those locations. Developed sites are rarely completely covered with buildings and pavement, though they may well be after implementation of this housing element.

Unsure Mitigation

The MND relies on illusive measures to conclude that no significant impact will occur. In most cases such as potential impacts on historic resources (p. 62), geologic issues (p. 68), greenhouse gases (p. 72,73), emergency response (p. 78), water quality (p.85), and circulation systems (p. 106), to name a few, impacts are optimistically expected to be eliminated due to future studies and mitigation measures that will be imposed at some point by some future public officials. Passing the buck to future officials and keeping our fingers crossed does not constitute mitigation.

This approach fails to even consider that in some cases it may not be possible to mitigate an impact to a level of insignificance. It also assumes that thorough studies will be conducted to identify all potential impacts. That becomes all the more unlikely in light of a city document asserting, as here, that no impact will occur.

Even where specific mitigation measures are asserted to eliminate potential impacts, there is no assurance that an impact will actually be mitigated. For example, MMCR-1 calls for impacts on historic resources to be evaluated, but there is not requirement for elimination of the impact. MMCR-2 calls for an archaeologist to recommend mitigation, but there is not requirement that the recommendation be adopted or implemented.

Impacts on several systems, such as parks and circulation, would be mitigated through payment of a fee. However, there is no assurance that the as yet to be identified impact will actually be alleviated by spending the fees. In addition, city fees are typically set somewhat lower than actual cost to the city for providing service. For example, the fee for apartment units was set at only about \$5,000, though the actual costs of providing facilities and services for new apartment residents was calculated to run up to the \$30,000 per unit range by city studies. Courts have found that “we’ll throw money at it” is not an adequate mitigation measure absent specific items where the money will be targeted.

In addition, I have the following concerns regarding impacts to specific issues.

Air Quality

As stated in the MND (p. 50):

CARB’s Air Quality and Land Use Handbook: A Community Health Perspective recommends against siting sensitive receptors within 500 feet of a freeway, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day. The primary concern with respect to heavy-traffic roadway adjacency is the long-term effect of TACs, such as diesel exhaust particulates, on sensitive receptors. The primary source of diesel exhaust particulates is heavy-duty trucks on freeways and high-volume arterial roadways.

It is thus troubling that significant numbers of units would be “facilitated” in close proximity to freeways. This would render on-site recreation facilities of limited utility, further increasing impacts on city recreation facilities. Where dwelling are close to the freeway, passive ventilation is not advisable, to be replaced by use of air filters and air conditioners, increasing energy consumption and generation of greenhouse gases. This is a significant environmental impact.

Biological Resources

The document fails to identify biological resources on vacant sites or on the Fairview Developmental Center site. Hawks, owls, and other raptors have been observed foraging and resting on the FDC site. Due to the large expanse of open space and low intensity of human activity on the property, significant resources have been observed to exist. Elimination of this habitat area is a significant environmental impact.

Aesthetics

Clearly the high density housing proposed would result in structures several stories high. These have the potential to block views and create shade and shadow in the nearby area. There is no assurance that these impacts will be mitigated, simply a statement that impacts will somehow be reviewed in the future. That is not adequate. It is especially critical that aesthetic impacts be reviewed NOW in light of infill exemptions that specifically call out aesthetics as an area NOT to be reviewed for certain, specified infill projects. At a minimum that must include projects

stepped back on upper levels, preservation of view corridors, and similar measures, and similar concrete requirements. Unless further mitigated, this is a significant adverse impact.

Recreation

According to the MND (p. 48), the city's population will grow by 47,333 under growth "facilitated" by the proposed housing element. Based on the adopted desired parkland ratio in the city's general plan, this would create a demand for over two hundred additional acres of parkland. The city does not have two hundred acres additional acres available. Thus existing parks and recreation facilities will be further crowded and overstressed. AS noted above, fees collected are no commensurate with actual costs to the community. Further, the city does not have a plan or even a concrete strategy for providing the additional needed facilities even if funding were adequate. This is a significant adverse impact.

Water

California is in a permanent state of drought. We have been asked to conserve water, and some areas are entering mandatory conservation. While Mesa Consolidated has prepared a Water Management Plan which projects adequate water for units anticipated under existing planning programs, that is not a guarantee that there is adequate water for tens of thousands of additional residents. It is astounding that the MND shows no evidence that no one from Mesa Water or MWD was even contacted for this initial study. Clearly, the proposed project has the potential to strain our water systems to the point where existing residents and businesses could face cutbacks or even rationing. This is a significant environmental impact.

In addition, what new water supply facilities might be required? Are existing water mains adequate to provide for the additional residents and for adequate fire flows? The MN D fails to even consider any stress on the water system. Clearly systems installed years ago for lower intensity development will be strained by the large numbers of additional housing units.

Wastewater

The MND concludes without analysis that there will be no impacts on sewer systems. The city has aging sewer systems that would be stressed by a 41.9 percent increase in population and associated wastewater generation.

The MND asserts that impacts on wastewater treatment would be insignificant because the increase represented by the new units in Costa Mesa would represent only a small percentage increase in wastewater flow in the system. The OCSD plant has some additional capacity, but it is not limitless and occasional malfunctions occur when the system is stressed, as we smell in certain parts of Costa Mesa.

The MND fails to consider cumulative impacts on the system. OCSD serves much of Orange County. Under the RHNA, cities in Orange County would provide approximately 184,000 new dwelling units, the vast majority of them in the OCSD service area. It is likely that this number of additional units would require additional facilities. This is a significant cumulative environmental impact.

OCSD currently treats up to 10 MGD per day of urban runoff under its Dry Weather Urban Runoff program, when capacity is available. Increased demand for wastewater treatment by Costa Mesa and other communities in the OCSD service area would utilize capacity currently

utilized for DWUR, resulting in increased marine and beach pollution. This is a significant environmental impact.

It is only in the early part of this millennium that OCSD went to full secondary treatment in order to reduce impacts on marine water quality. Impacts on this system would occur.

Public Safety

As stated in the MND (p. 100):

All candidate housing sites are within urbanized areas, surrounded by development, and served by CMPD. Potential impacts would include placing greater demands upon police stations, personnel, and equipment over time, potentially resulting in the need to provide new or expanded facilities in order to maintain acceptable service ratios.

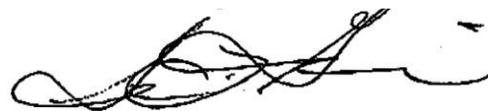
Incredibly, the MND then concludes that no impacts would occur. The City and the state as a whole are experiencing significant increases in crime. Police departments in the region all seem to be understaffed, competing for a limited pool of high quality candidates. Despite heavy recruitment efforts, Costa Mesa's police staffing level has been well below the budgeted number of officers needed to serve just the population we have. Adding thousands more dwelling units and tens of thousands of new residents will exacerbate this problem. This is both significant and adverse.

Conclusion

Based on the above, it cannot be assured that no significant adverse impacts will occur as a result of the proposed project. On the contrary, it is likely that impacts can and will occur. Thus, the proposed MND should not be adopted.

Thank you for the opportunity to comment. Please keep me informed as this project proceeds.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', with a stylized flourish at the end.

Sandra L. Genis