AIRPORT LAND USE COMMISSION
FOR ORANGE COUNTY
3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

May 10, 2022

Scott Drapkin, Assistant Director
City of Costa Mesa, Development Services
77 Fair Drive
Costa Mesa, CA 92626

Subject: Response to Notice of Intent to Overrule the Airport Land Use Commission Determination for Costa Mesa 2021-2029 Housing Element Update.

Dear Mr. Drapkin:

We are in receipt of your April 11, 2022 email notifying the Airport Land Use Commission (ALUC) for Orange County of the City's intent to overrule the ALUC's inconsistency determination on the 2021-2029 Housing Element Update. City Council Resolution No. 2022-xx was attached (finalized as Resolution No. 2022-19). In accordance with Section 21676 of the Public Utilities Code, the ALUC submits the following comments addressing the proposed overrule findings for the above-referenced project. This letter is advisory to the City and must be included in the public record of any final decision to overrule the ALUC, which may only be adopted by a two-thirds vote of the City's governing body.

Please be advised that California Public Utilities Code (PUC) Section 21678 states: "With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676, 21676.5, or 21677 overrules a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to overrule the commission's action or recommendation."

Background

On March 17, 2022, the ALUC for Orange County found the Costa Mesa Housing Element Update to be inconsistent with the *Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA)* on a 4-0 vote. The inconsistent finding was based on AELUP Sections 2.1.3 and 2.1.4, and PUC Sections 21674(a) and 21674(b). ALUC has the following comments regarding Resolution No. 2022-19 and the findings of facts included therein.

The City has stated in its resolution, "WHEREAS, California Public Utilities Code Section 21676(b) requires the City of Costa Mesa to refer an amendment of the City's general plan or

specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the Airport Land Use Commission (ALUC) pursuant to Section 21675 to the ALUC for their consideration." This paraphrasing of the wording in PUC Section 21676(b) has neglected to include the requirement that a city must refer such actions to ALUC *prior* to approval by the city. The specific PUC wording is, "Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675 , the local agency shall first refer the proposed action to the commission." The City failed to refer its Housing Element Update to ALUC prior to its approval action. The City approved the Update on February 1, 2022 and scheduled the item for ALUC review on March 17, 2022.

Response to Finding No. 1 - Regarding Public Utilities Code (PUC) Section 21699
PUC Section 21699 referred to in Finding No. 1, relates to noise standards. ALUC's inconsistency finding was not based on noise standards, therefore, the City's Finding No. 1 does not address the inconsistency finding and is not an adequate finding on which to base the City's overrule. The ALUC appreciates that the City's Noise Element addresses potential noise impacts and that the City requires an "interior noise standard of 45 dBA CNEL be enforced for any new residential project."

Response to Finding No. 2 - Regarding PUC Section 21670
Section 2.1.4 of the *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)* and PUC Section 21670 states that the purpose of ALUCs is "to protect the 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." ALUC's inconsistency finding was based on the safety hazards created by changing the land use from commercial/mixed-use to residential in high-rise buildings in close proximity to John Wayne Airport.

The six housing sites identified in the 2021-2029 Housing Element Update located in the North Costa Mesa area of Focus Area 2 (Sites 139, 140, 141, 201, 202 and 205) are part of the Cultural Arts Center area and have existing height limitations of 315 feet AGL. With ground elevations ranging from 32 to 36 feet, the proposed residential buildings on these sites would penetrate the JWA horizontal surface by 141 to 145 feet. Sites in this area were previously reviewed by ALUC in 2006 and 2007 for proposed residential uses and found to be inconsistent with the *AELUP for JWA* because of penetration of the JWA horizontal obstruction surface. At that time, the FAA determined that the project was an obstruction by exceeding the standards of FAR Part 77, Subpart C, by (1) surpassing the 200 feet AGL threshold and (2) exceeding the horizontal surface for JWA, but determined the project was not a hazard to air navigation. The City then took steps to overrule the ALUC in accordance with PUC Sections 21676 and 21676.5. Although the City overruled at that time, it does not change the fact that the ALUC previously made a finding of inconsistency. Therefore, it would be contrary to the prior ALUC decision if the ALUC were to find these candidate housing sites, now included in the City-adopted 2021-2029 Housing

Element Update, as consistent. The ALUC continues to believe that high-rise residential uses that penetrate the obstruction imaginary surfaces would pose a safety risk to the future residents. The City's finding also addresses the site elevation data for three other candidate housing sites in Focus Area 2 (Sites 144, 206 and 207) as being imprecise and unreliable. Google Earth was used for site elevation analysis because it was the tool that ALUC had available. If the City had provided site elevation data, the ALUC would have used that for its analysis.

The finding notes that actual topographic data can be included in future North Costa Mesa Specific Plan updates or when an actual project is proposed. While these future actions would require ALUC review, and may indeed include detailed topographic data, the ALUC used the data available at the time of the current Housing Element Update. It was important for ALUC to review potential penetrations of obstruction surfaces during this Update analysis since allowable building heights plus site elevations could exceed the horizontal surface threshold. If a potential surface penetration were not identified during ALUC's review of this general plan Housing Element Update, there would likely be future assertions by the City during subsequent project reviews, that ALUC had not identified any issues previously. Subsequent projects such as Zoning Code and specific plan amendments will be evaluated and analyzed by ALUC in accordance with Public Utilities Code (PUC) Section 21675 when they are submitted by the City.

Additionally, in accordance with Public Utilities Code (PUC) Section 21675, which states that local agencies must first refer proposed General Plan Amendments to ALUC prior to City action, the ALUC's role is to identify possible conflicts with an AELUP at the earliest possible opportunity. In the case of the City's 2021-2029 Housing Element Update, the City took approval action prior to ALUC review and did not act in accordance with the PUC.
We urge the City Council to take ALUC's concerns into consideration in its deliberations prior to deciding whether to overrule ALUC. Thank you for the opportunity to provide these comments.

Sincerely,

Gerald A. Bresnahan for
Chairman

cc: Members of Airport Land Use Commission for Orange County
Gabrielle Sefranek, Caltrans/Division of Aeronautics

California Department of Transportation

DIVISION OF AERONAUTICS
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June 7, 2022

Mr. Scott Drapkin
Assistant Director, Development Services
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Mr. Drapkin:

Thank you for including the California Department of Transportation (Caltrans), Division of Aeronautics (Division) in the overrule process for the above-referenced project. California Public Utilities Code (PUC) Section 21676 (http:www.leginfo.ca.gov/calaw.html), requires Caltrans to review the specific findings a local government intends to use when proposing to overrule an Airport Land Use Commission (ALUC). Specifically, the findings are examined to determine whether they are consistent with the purposes of the statutes as set forth in the State Aeronautics Act (SAA) per PUC Section 21670 et seq.

Section 21670(a) outlines five separate purposes for the legislation as follows:

- "…to provide for the orderly development of each public use airport in this state…"

- "…to provide for the orderly development of…the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards…"

- "…to provide for the orderly development of…the area surrounding these airports so as…to prevent the creation of new noise and safety problems."

- "…to protect the public health, safety, and welfare by ensuring the orderly expansion of airports…"

- "…to protect the public health, safety, and welfare by…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."

Additionally, the SAA identifies the California Airport Land Use Planning Handbook (Handbook) to provide guidance for conducting airport land use compatibility planning as required by PUC Sections 21670-21579.5

Simply stated, the findings must show evidence that the city is minimizing the public's exposure to excessive noise and safety hazards within areas around public airports.

The proposed project, the City of Costa Mesa 2021-2029 6th Cycle Housing Element was reviewed by the Orange County ALUC (OCALUC) to determine whether the action is consistent with the Airport Environs Land Use Plan (AELUP). The ALUC staff report specifically described four AELUP consistency review areas for the Housing Element update: 1) Aircraft Noise Impacts, 2) Aircraft Height Restrictions, 3) Flight Tracks and Safety Zones, and 4) Heliports. The Orange County ALUC staff recommended a rule for inconsistency pursuant to AELUP Sections 2.1.3, 2.1.4 and PUC Section 21674.

Our review of the materials provided indicates the prime issue of inconsistency lies in the City's blueprint for future potential actions that are needed to meet the City's Regional Housing Needs Analysis allocation and comply with State Housing Element law. In accordance with Housing Element law, the City will process General Plan, Zoning Code and Specific Plan amendments, which would be subject to ALUC review. The City contends the Housing Element update does not in and of itself include any changes to local land use standards, including height restrictions, location, or number of housing units.

The City asserts specific findings to justify this overrule.

Finding No. 1: "…the City's candidate housing sites are appropriately located outside of airport noise contours of concern and further the City's General Plan Noise Element addresses potential applicable residential noise impacts in General Plan Noise Element Policies N-1.1, N-1.5, N-1.6, N-2.4 and N-2.6."

However, this finding is not consistent with planning regulations in the Government Code, to wit:

Government Code 65583
(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

Government Code 65302
(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(h) (1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The environmental

justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

In addition, SB 1000, chaptered in 2016, requires local governments to identify environmental justice communities (called "disadvantaged communities") in their jurisdictions and address environmental justice in their general plans. This new law has several purposes, including to facilitate transparency and public engagement in local governments' planning and decision-making processes, reduce harmful pollutants and the associated health risks in environmental justice communities, and promote equitable access to health-inducing benefits, such as healthy food options, housing, public facilities, and recreation.

Finding No. 2: "…the City's Housing Element update does not grant any entitlements, change any land use standards or authorize any development beyond what is allowed under the City's current General Plan and Zoning Code…"

The City believes that the proposed recommendation to submit future permits is premature based on Public Utilities Code Section 21676.5(a), which states:

"*If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made*."

As the Housing Element is a mandatory part of the General Plan and requires an amendment to the General Plan, it falls under the same review requirements for determining consistency.

California courts have supported the ALUC review of General Plans in *Watsonville Pilots Assoc. v. City of Watsonville (April 12, 2010) 183 Cal.App.4th 1059*. The City must conform to the State Aeronautics Act (SAA, Public Utilities Code Section 21670 et seq.) in its approach to planning areas adjoining the airport.

The SAA is intended to protect public safety 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 in areas around public airports. According to the Court, the Handbook is a guide for counties with an ALUC; must be relied upon relative to height, use, safety, and density criteria by alternative procedure counties; and in the case of Watsonville, the city must adopt in its General Plan noise and safety criteria that are consistent with the criteria in the Handbook. The Court opined that "*we can see nothing in the statutory language that indicates that the Legislature intended to grant discretion to an affected city ... to decide which of the Handbook's criteria should be incorporated into such a city's general plan.*" As a result, Watsonville's 2030 General Plan, which conflicted with the Handbook's restrictions on land uses near airports, was therefore invalid.

The Division has reviewed the proposed findings provided by the City and has determined the findings are insufficient to warrant this proposed overrule. Specifically, the findings are not consistent with the purposes of the statutes set forth in the California Public Utilities Code (PUC) section 21670. These findings do not provide substantial evidence that the proposed Project will meet the requirements of PUC statutes set forth in PUC section 21670. These findings do not provide substantial evidence that the proposed Project will meet the requirements of PUC, section 21670(a) (1) and (2).

Based on the information provided by both the City and the OCALUC, the Division does not agree with the City's findings.

The Division strongly recommends not approving this overrule due to significant safety risks and potential noise incompatibility. Please note the PUC reference below, which mandates that local agencies shall be guided by the height, use, noise, safety, and density criteria as established in the Handbook:

California Public Utilities Code, section 21674.7 (b):

It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, structure, or facility, and before the construction of a new building, it is the intent of the Legislature that local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the Division.

It must be understood that protecting people and property on the ground from the potential consequences of near-airport aircraft accidents is a fundamental land use

compatibility-planning objective. While the chance of an aircraft injuring someone on the ground is historically quite low, an aircraft accident is a high consequence event. To protect people and property on the ground from the risks of near-airport aircraft accidents, some form of restrictions on land use is essential.

The John Wayne Airport is a vital part of the air transportation system and is an economic asset with its 350,000 operations and 10.7 million commercial passengers in 2019. The airport will continue to increase commercial and air cargo service at John Wayne Airport, and we commend the efforts of the Orange County Airport Land Use Commission in making careful and reasoned decisions in attempting to ensure compatible land uses in the vicinity of the Airport.

Although the need for compatible and safe land uses near airports in California is both a local and State issue, airport staff, airport land use commission and airport land use compatibility plans are key to protecting an airport and the people residing, working and recreating in the vicinity of an airport. Consideration given to the issue of compatible land uses within an airport's environs should help to relieve future conflicts between airports and their neighbors.

As a reminder, pursuant to PUC 21676, et seq., the local agency governing body shall include comments from the OCALUC and the Division in the final record of any final decision to overrule the commission.

Please note: The Division comments are to be included in the public record of any decision to overrule the OCALUC.

These comments reflect the areas of concern to the Caltrans's Division of Aeronautics. We appreciate the opportunity to review and comment on this project. If you have questions, please do not hesitate to contact us at (916) 654-5203.

Sincerely,

Jeffrey L. Spencer
Associate Transportation Planner
Division of Aeronautics
Office of Planning

c: Lea Choum, Executive Officer, Orange County Airport Land Use Commission
Matt Friedman, Chief, Office of Aviation Planning, Division of Aeronautics

City Responses to Comments

Airport Land Use Commission (ALUC) May 10, 2022 Comments

ALUC Comment for purpose Finding No. 1 (direct quote from ALUC letter provided below):

Response to Finding No. 1 - Regarding Public Utilities Code (PUC) Section 21699
PUC Section 21699 referred to in Finding No. 1, relates to noise standards. ALUC's inconsistency finding was not based on noise standards, therefore, the City's Finding No. 1 does not address the inconsistency finding and is not an adequate finding on which to base the City's overrule. The ALUC appreciates that the City's Noise Element addresses potential noise impacts and that the City requires an "interior noise standard of 45 dBA CNEL be enforced for any new residential project."

City response to ALUC comment to purpose Finding No. 1:

The ALUC comments responded to the City that the ALUC "inconsistency finding was not based on noise standards." However, the ALUC comments further indicated that they appreciate that the City's Noise Element addresses potential airport noise impacts and requires an interior noise standard of 45 dBA CNEL to be enforced for any new residential project. Therefore, the Housing Element is consistent with the "purpose" outlined in PUC Section 21670.

ALUC comment for purpose Finding No. 2 (direct quote from letter provided below):

Response to Finding No. 2 - Regarding PUC Section 21670
Section 2.1.4 of the *Airport Environs Land Use Plan for John Wayne Airport (AELUP for JWA)* and PUC Section 21670 states that the purpose of ALUCs is "to protect the 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." ALUC's inconsistency finding was based on the safety hazards created by changing the land use from commercial/mixed-use to residential in high-rise buildings in close proximity to John Wayne Airport.

The six housing sites identified in the 2021-2029 Housing Element Update located in the North Costa Mesa area of Focus Area 2 (Sites 139, 140, 141, 201, 202 and 205) are part of the Cultural Arts Center area and have existing height limitations of 315 feet AGL. With ground elevations ranging from 32 to 36 feet, the proposed residential buildings on these sites would penetrate the JWA horizontal surface by 141 to 145 feet. Sites in this area were previously reviewed by ALUC in 2006 and 2007 for proposed residential uses and found to be inconsistent with the *AELUP for JWA* because of penetration of the JWA horizontal obstruction surface. At that time, the FAA determined that the project was an obstruction by exceeding the standards of FAR Part 77, Subpart C, by (1) surpassing the 200 feet AGL threshold and (2) exceeding the horizontal surface for JWA, but determined the project was not a hazard to air navigation. The City then took steps to overrule the ALUC in accordance with PUC Sections 21676 and 21676.5. Although the City overruled at that time, it does not change the fact that the ALUC previously made a finding of inconsistency. Therefore, it would be contrary to the prior ALUC decision if the ALUC were to find these candidate housing sites, now included in the City-adopted 2021-2029 Housing

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Element Update, as consistent. The ALUC continues to believe that high-rise residential uses that penetrate the obstruction imaginary surfaces would pose a safety risk to the future residents. The City's finding also addresses the site elevation data for three other candidate housing sites in Focus Area 2 (Sites 144, 206 and 207) as being imprecise and unreliable. Google Earth was used for site elevation analysis because it was the tool that ALUC had available. If the City had provided site elevation data, the ALUC would have used that for its analysis.

The finding notes that actual topographic data can be included in future North Costa Mesa Specific Plan updates or when an actual project is proposed. While these future actions would require ALUC review, and may indeed include detailed topographic data, the ALUC used the data available at the time of the current Housing Element Update. It was important for ALUC to review potential penetrations of obstruction surfaces during this Update analysis since allowable building heights plus site elevations could exceed the horizontal surface threshold. If a potential surface penetration were not identified during ALUC's review of this general plan Housing Element Update, there would likely be future assertions by the City during subsequent project reviews, that ALUC had not identified any issues previously. Subsequent projects such as Zoning Code and specific plan amendments will be evaluated and analyzed by ALUC in accordance with Public Utilities Code (PUC) Section 21675 when they are submitted by the City.

City response to ALUC comment to purpose Finding No. 2:

The ALUC comment letter indicates that in regard to PUC Finding No. 2, their "inconsistency finding was based on the safety hazards created by changing the land use from commercial/mixed use to residential high rise building in close proximity to John Wayne Airport. The ALUC finding of inconsistency specifically pertains to proposed housing sites located within the North Costa Mesa Specific Plan area. As indicated by the ALUC comment, the PUC Purpose Finding No. 2 clearly references "the protection of public health, safety and welfare"; however, this finding in complete context also specifies "to minimize the public's exposure to excessive noise and safety hazards around public airports to the extent that these areas are not already devoted to incompatible uses" [emphasis added]. As indicated in the "City Council adopted Justification for purpose Finding No 2", the area of the housing sites that the ALUC determined were "incompatible" are located in the North Costa Mesa Specific Plan area which is approved ("devoted") for a hotel/residential development project of 304 feet. At the time this project was approved, the City processed an ALUC overrule with findings based on the Federal Aviation Administration (FAA) determination that the proposed building height of 304 feet "would not adversely affect air safety" and the FAA subsequently issued a "no hazard determination." Additionally, this area is currently developed with the "Plaza Tower" and "Center Tower" buildings which both exceed 20 stories. Since this area, as determined by the ALUC, is already "devoted" with similar "incompatible uses", purpose Finding No. 2 is not applicable to the subject housing sites pursuant to the PUC provisions. Therefore, the proposed justification to overrule the ALUC determination for purpose Findings No. 2 is appropriate, and the Housing Element is consistent with the "purpose" outlined in PUC Section 21670.

Caltrans Division of Aeronautics June 7, 2022 Comments

Caltrans comment for purpose Finding No. 1 (direct quote from letter provided below):

Finding No. 1: "...the City's candidate housing sites are appropriately located outside of airport noise contours of concern and further the City's General Plan Noise Element addresses potential applicable residential noise impacts in General Plan Noise Element Policies N-1.1, N-1.5, N-1.6, N-2.4 and N-2.6."

However, this finding is not consistent with planning regulations in the Government Code, to wit:

Government Code 65583
(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

Government Code 65302
(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(h) (1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The environmental

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justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

In addition, SB 1000, chaptered in 2016, requires local governments to identify environmental justice communities (called "disadvantaged communities") in their jurisdictions and address environmental justice in their general plans. This new law has several purposes, including to facilitate transparency and public engagement in local governments' planning and decision-making processes, reduce harmful pollutants and the associated health risks in environmental justice communities, and promote equitable access to health-inducing benefits, such as healthy food options, housing, public facilities, and recreation.

City response to Caltrans comment to purpose Finding No. 1:

In regard to Finding No. 1, the Caltrans Division of Aeronautics (Caltrans) responded that the City's findings are "not consistent with the planning regulations in the Government Code." Specifically, the Caltrans' comments reference the California Land Use provisions relating to "Housing Elements" (Section 65583) and the "Authority for the Scope of General Plans" (Section 65302). However, neither of these provisions are specified for compliance in the PUC provisions relating to the "overrule" process, and therefore are not applicable. Finding No. 1 is specifically related to "noise" and, as confirmed by the ALUC, the City's Noise Element addresses potential airport noise impacts and requires an interior noise standard of 45 dBA CNEL to be enforced for any new residential project. Therefore, the Housing Element is consistent with the "purpose" outlined in PUC Section 21670.

Caltrans comment for purpose Finding No. 2 (direct quote from letter provided below):

Finding No. 2: "...the City's Housing Element update does not grant any entitlements, change any land use standards or authorize any development beyond what is allowed under the City's current General Plan and Zoning Code..."

The City believes that the proposed recommendation to submit future permits is premature based on Public Utilities Code Section 21676.5(a), which states:

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"If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made."

As the Housing Element is a mandatory part of the General Plan and requires an amendment to the General Plan, it falls under the same review requirements for determining consistency.

California courts have supported the ALUC review of General Plans in *Watsonville Pilots Assoc. v. City of Watsonville (April 12, 2010) 183 Cal.App.4th 1059*. The City must conform to the State Aeronautics Act (SAA, Public Utilities Code Section 21670 et seq.) in its approach to planning areas adjoining the airport.

The SAA is intended to protect public safety 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 in areas around public airports. According to the Court, the Handbook is a guide for counties with an ALUC; must be relied upon relative to height, use, safety, and density criteria by alternative procedure counties; and in the case of Watsonville, the city must adopt in its General Plan noise and safety criteria that are consistent with the criteria in the Handbook. The Court opined that "*we can see nothing in the statutory language that indicates that the Legislature intended to grant discretion to an affected city ... to decide which of the Handbook's criteria should be incorporated into such a city's general plan.*" As a result, Watsonville's 2030 General Plan, which conflicted with the Handbook's restrictions on land uses near airports, was therefore invalid.

City Response to Caltrans comment to Finding No. 2:

In regard to Finding No. 2, the Division responded that the purpose of the Division's review of the City's ALUC Determination overrule findings is to "determine whether they are consistent with the purpose of the statutes as set forth in the State Aeronautics Act (SAA) per PUC Section 21670." The Division comments, similar to the above ALUCs comments, cites the PUC provision related to safety and noise hazards around public airports. As previously indicated, the area of the housing sites that the ALUC determined were "incompatible" in regard to safety are located in the North Costa Mesa Specific Plan area which is entitled for a hotel/residential development project of 304 feet. At the time of approval of this project, the City processed an ALUC overrule with findings based on the Federal Aviation Administration (FAA) determination that the proposed building height of 304 feet "would not adversely affect air safety" and the FAA subsequently issued a "no hazard determination." Additionally, this area is currently developed with the Plaza Tower and Center Tower which exceed 20 stories. Since this area, as determined by the ALUC, is already "devoted" with similar "incompatible uses", Finding No. 2 is not applicable to the subject housing sites. Therefore, the proposed justification to overrule the ALUC determination for purpose Findings No. 2 is appropriate, and the Housing Element is consistent with the "purpose" outlined in PUC Section 21670.