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<b>Title:</b>	APPROVAL OF GENERAL PLAN AMENDMENT 21-01 FOR THE CITY OF COSTA MESA 2021-2029 (SIXTH CYCLE) HOUSING ELEMENT UPDATE (AS REVISED), AND ADOPTION OF A RESOLUTION TO OVERRULE THE INCONSISTENCY DETERMINATION MADE BY THE AIRPORT LAND USE COMMISSION FOR ORANGE COUNTY FOR THE CITY OF COSTA MESA'S 2021-2029 SIXTH CYCLE HOUSING ELEMENT UPDATE		
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Date	Ver.	Action By	Action	Result
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### TITLE:

**APPROVAL OF GENERAL PLAN AMENDMENT 21-01 FOR THE CITY OF COSTA MESA 2021-2029 (SIXTH CYCLE) HOUSING ELEMENT UPDATE (AS REVISED), AND ADOPTION OF A RESOLUTION TO OVERRULE THE INCONSISTENCY DETERMINATION MADE BY THE AIRPORT LAND USE COMMISSION FOR ORANGE COUNTY FOR THE CITY OF COSTA MESA'S 2021-2029 SIXTH CYCLE HOUSING ELEMENT UPDATE**

**DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION**

**PRESENTED BY: JENNIFER LE, DIRECTOR OF ECONOMIC AND DEVELOPMENT SERVICES**

**CONTACT INFORMATION: JENNIFER LE, (714) 754-5270**

### RECOMMENDATION:

Staff recommends the City Council:

1. Find that potentially significant effects on the environment have been adequately analyzed in the Initial Study/Mitigated Negative Declaration previously adopted on February 1, 2022 for the 2021-2029 (Sixth Cycle) Housing Element pursuant to State law, and find that none of the conditions described in CEQA Guidelines Section 15162 exist; therefore, no further action is required to comply with CEQA.
2. Approve Resolution No. 2022-XX to Override the Orange County Airport Land Use Commission's March 17, 2022 Determination that Costa Mesa's 2021-2029 (Sixth Cycle) Housing

Element is inconsistent with the John Wayne Airport Environs Land Use Plan.

3. Approve Resolution No. 2022-XX to approve the City of Costa Mesa 2021-2029 (Sixth Cycle) Housing Element (General Plan Amendment 21-01), as revised.
4. Direct the City Manager or designee to submit the adopted Housing Element to the State for certification, and authorize the City Manager or designee to make minor revisions to the adopted Housing Element as necessary to obtain State certification.

### **BACKGROUND:**

The Housing Element is a chapter of the City's General Plan and is required by the State to be updated every eight years. It provides an analysis of the City's demographic, economic, and housing characteristics, identifies community housing needs, and establishes objectives, policies, and programs to meet those needs. To remain in compliance with State Housing Law, the City's Housing Element must respond to various State laws and requirements and must be adopted by City Council and certified by California State Department of Housing and Community Development (HCD).

### **Regional Housing Needs Assessment (RHNA) Allocation**

As required by State Housing law, the State prepared a Regional Housing Needs Assessment (RHNA), and in conjunction with the Southern California Association of Governments (SCAG), allocated 11,760 housing units to the City as the City's "fair share" of regional housing needs. Pursuant to the RHNA, the City is required by the State to plan and zone property to facilitate housing production that meets the City's RHNA allocation, including 2,919 "very low" income units, 1,794 "low" income units, 2,088 "moderate" income units and 4,959 "above moderate" income units. Refer to Table 1. The City is not required to build the aforementioned housing units; however, the City is obligated to update the Housing Element to support housing development through land use related goals, policies, and programs, and submit annual reports to the State as to the City's progress and implementation.

<b>Table 1 – Final RHNA Allocation</b>				
<b>Income Category</b>	<b>% of Area Median Income (AMI)</b>	<b>Income Range Min. – Max.</b>		<b>RHNA Allocation</b>
Very Low Income	0-50% AMI	--	\$64,050	2,919 units
Low Income	51-80% AMI	\$64,051	\$102,450	1,794 units
Moderate Income	81-120% AMI	\$102,451	\$123,600	2,088 units
Above Moderate Income	%120% AMI	\$123,601	--	4,959 units
<b>Total RHNA</b>				<b>11,760 units</b>

## **Public Review Drafts and Planning Commission Recommendation**

Following a series of community outreach meetings including townhalls, an online community survey, and study sessions, staff and its expert consultant (Kimley-Horn) prepared an initial draft of the Housing Element Update. The draft Housing Element was made available for public comment in August 2021 and was subsequently discussed at a joint Planning Commission and City Council study session in September 2021. The Draft Housing Element update was submitted to HCD in October 2021, and incorporated City Council, Planning Commission and public comments. HCD comments on the City's draft were received in December 2021.

Subsequently, the Planning Commission reviewed the Draft Housing Element and received public comments at its November 8, 2021, November 22, 2021 and December 13, 2021 public hearings. The Planning Commission discussed the proposed revisions addressing HCD comments, and ultimately recommended approval by a 6-1 vote.

Information regarding the Housing Element Update process is accessible on the City's website at: <https://www.costamesaca.gov/city-hall/city-departments/development-services/planning/housing-element-update>

## **City Council Adopted Housing Element - February 1, 2022**

Following a preliminary review of the Draft Housing Element at its January 18, 2022 public hearing, the City Council approved and adopted the 2021-2029 (Sixth Cycle) Housing Element (General Plan Amendment 21-01), and the associated Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) on February 1, 2022 by a 6-1 vote.

The staff report focused on responding to State HCD's December 2021 comment letter and recommended adoption of the Housing Element and its submittal to the State for certification prior to the February 11, 2022 statutory deadline. The staff report stated "if HCD requires additional corrections, staff will bring the Housing Element to the Council for an update at that time." At the meeting, staff also acknowledged a comment letter received from the Airport Land Use Commission (ALUC) and indicated that it would continue its work with the ALUC while the Housing Element was being reviewed by State. Staff submitted the adopted Housing Element to the State on February 5, 2022.

*January 18, 2022 and February 1, 2022 City Council Reports:*

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5384364&GUID=2517E4A6-107E-496C-84D3-24D70098F31F>

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5394490&GUID=F1DADF56-728F-4C7A-9E6E-70CEF2F0EC46&Options=&Search>

## **City Council Approval of the Notice of Intent to Override the ALUC's Consistency Determination - April 5, 2022**

When a jurisdiction proposes a General Plan amendment within the "planning boundary" established by the Airport Land Use Commission (ALUC), State law requires the ALUC to make a determination as to whether the proposed land use change is consistent with the applicable Airport Environs Land

Use Plan. The ALUC serves as a “limited advisory body” and may make a determination as to consistency but the Costa Mesa City Council has the final authority to make land use decisions in the City.

On March 17, 2022, the ALUC considered the City’s 2021-2029 6th Cycle Housing Element. After receiving the ALUC staff presentation and a follow up presentation by City staff, the ALUC determined that the City’s Housing Element update is inconsistent with the John Wayne Airport Environs Land Use Plan (AELUP) by a vote of 4-0. Additional information regarding the ALUC March 17, 2022 meeting is available online at:

[<https://www.ocair.com/about/administration/airport-governance/commissions/airport-land-use-commission/march-17-2022/>](https://www.ocair.com/about/administration/airport-governance/commissions/airport-land-use-commission/march-17-2022/)

Pursuant to Public Utilities 21676(b), the City may, after a public hearing, propose to overrule the ALUC’s determination by a two-thirds vote of the City Council. Overruling an ALUC inconsistency decision requires two public hearings: one hearing for the City Council determination to notify ALUC of its intention to overrule the ALUC decision, and a second hearing for the City Council to include on the public record any ALUC and/or Caltrans Division of Aeronautics comments, and to adopt the findings to overrule ALUC’s determination.

On April 5, 2022, the City Council reviewed a detailed staff analysis of the ALUC determination as well as the required findings necessary to overrule ALUC’s inconsistency determination and unanimously adopted Resolution No. 2022-19. This Resolution included the justifications for finding that the 2021-2029 Sixth Cycle Housing Element is consistent with the AELUP pursuant to Public Utilities Code (PUC) Section 21670, and direction to staff to notify the ALUC of the City’s intent to “overrule” ALUC’s determination.

*April 5, 2022 City Council Report:*

[<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5542239&GUID=99E91626-EFB3-4F8C-9A0F-64160C54C4B7>](https://costamesa.legistar.com/LegislationDetail.aspx?ID=5542239&GUID=99E91626-EFB3-4F8C-9A0F-64160C54C4B7)

Pursuant to Public Utilities Code (PUC) Section 21676, on April 11, 2022, the City Council Resolution was forwarded to both the ALUC and the Caltrans Division of Aeronautics. Subsequently, both agencies provided comment letters (provided as an Attachment 5 to this report) which are hereby included in the public record of the City Council’s final decision to overrule the commission.

As discussed in the Analysis section of this report, staff recommends that the City Council hold the second public hearing required as part of the ALUC “overrule” process, and adopt a Resolution to override the ALUC’s inconsistency determination.

### **HCD Comment Letter - April 5, 2022**

Following the submittal of the adopted Housing Element in February 2022, HCD provided an additional comment letter dated April 5, 2022. The letter outlined additional State comments and requested updates to certain sections of the adopted Housing Element. HCD’s April 5<sup>th</sup> letter is attached to this report as Attachment 4. As noted in HCD’s letter, the City’s adopted 2021-2029 Sixth Cycle Housing Element addressed many of the State’s statutory requirements. However, additional supporting information, data and updated implementing programs were requested in order to obtain

Housing Element certification.

Since receiving HCD's comment letter, staff have worked with the City's expert consultant to complete the additional analyses and revisions and have also had several discussions with HCD staff in order to craft a revised Housing Element that the State will certify.

### **ANALYSIS:**

The Analysis section of this report focuses on proposed revisions made to key sections of the adopted Housing Element to respond to the April 2022 HCD comments. It also provides a summary discussion of the required findings necessary to override ALUC's previous inconsistency determination.

### **Proposed Revisions to the Adopted Housing Element**

In response to HCD's April 2022 comment letter (Attachment 4), the 2021-2029 (Sixth Cycle) Housing Element was revised to provide additional supporting data, analysis, and clarifications regarding Housing Needs, Resources and Constraints, and new and modified Housing Programs.

The revisions to the Housing Element in response to HCD comments do not modify the City's fundamental approach to planning for future housing. The City's Housing Element continues to propose to meet its RHNA allocation through a combination of 1) incremental growth in established single family residential neighborhoods through, for example, accessory dwelling units; and 2) rezoning of sites within and around existing Specific Plan, Urban Plan and residential overlay areas to accommodate the additional housing units necessary to meet the City's RHNA allocation. None of the corridors, housing opportunity sites, or anticipated densities cited in the previously-adopted Housing Element have been modified.

Rather, HCD comments and the proposed revisions focus on providing additional information justifying the City's approach, and providing modified and new housing "programs" specifically requested by the State. In addition, the timing for completion of certain Housing Element programs has been modified and "objectives" were added to each program to further clarify intended outcomes (refer to Housing Element Chapter 4, Housing Programs).

The below discussion highlights key revisions. The proposed revisions to the Housing Element in their entirety are provided in underline/strikethrough format as Attachment 1 to this report. The proposed revisions were made available to the public online on the City's website on November 8, 2022.

- **HCD requested additional analysis and expanded programs related to Extremely Low Income (ELI) Households and "Affirmatively Furthering Fair Housing" (AFFH)**

*Proposed Housing Element Modification:* HCD requested that the analysis for "Affirmatively further [ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2... shall include an assessment of fair housing in the jurisdiction." The revised Housing Element includes additional information regarding the City's capacity to address housing complaints, services provided to the community through the Fair Housing Foundation, concentrations of persons with disabilities and available resources, additional analysis regarding lower income areas and affordability, displacement risk, local knowledge of areas with substandard housing conditions and the estimated need for housing rehabilitation efforts. This information is added throughout Chapters 2

(Community Profile) and 3 (Resources and Constraints) of the Housing Element and also resulted in modified Housing Element Programs 2L (*Development of Housing for Extremely Low and Lower - Income Households*), 4A (Fair Housing) and 4I (Partnerships with Local Organizations and Community Groups for high poverty census tracts).

- **HCD requested additional information regarding development trends and housing opportunity sites and new programs pertaining to small and large housing sites**

*Proposed Housing Element Modification:* HCD requested additional information and analysis regarding: 1) redevelopment trends for already- developed properties in Costa Mesa that are similar to identified housing opportunity sites; 2) small (less than an acre) and large (more than 10 acres) housing opportunity sites; and 3) information regarding environmental constraints that could affect housing opportunity sites. In response, a market analysis and development trend analysis was included in Housing Element Appendix B (Adequate Sites Analysis). In addition, specific findings related to such development trends have been included in the attached Resolution for Housing Element adoption. Additional information regarding small and large housing sites was also added and Program 3Q (Lot Consolidation for small sites) and 3R (Large Sites), summarized below, were also added. Lastly, staff added additional details regarding hazardous materials sites located in Costa Mesa's industrial areas.

- **Program 3Q: Lot Consolidation**
  - For smaller housing sites, this program commits the City to streamline processes and establish incentives for lot consolidation, publish this information online, monitor the effectiveness, and adjust such incentives as needed.
- **Program 3R: Development of Large Sites**
  - This program commits the City to evaluating the development status of the five "large" housing opportunity sites identified within the Housing Element and to identify additional housing sites if no development progress is made for each of the five sites. The program will include outreach and promoting housing development.

- **HCD requested the City reduce its ADU construction estimates and expand ADU programs**

*Proposed Housing Element Modification:* HCD requested the City reduce its ADU construction estimate to 40 to 50 units per year. Staff included information that shows the number of ADU's approved in 2022 already exceed the State's annual estimate, adjusted the projected number of ADU's built per year from 70 ADUs to 50 ADUs, and modified Program 3E and Program 3M related to promoting ADU's and monitoring ADU production throughout the planning period.

- **Program 3E: Promote the Development of ADU's**
  - This program was modified to include a commitment to review and revise the City's ADU Ordinance as necessary to comply with State law. The revisions to the ADU Ordinance identified by the State were already reviewed and recommended for approval by the Planning Commission at its October 24, 2022 public meeting.
- **Program 3M: ADU and JADU Monitoring Program**
  - This program commits the City to monitor ADU production and affordability and make adjustments (e.g., provide additional incentives) if there is a shortfall in ADU

construction.

- **HCD requested additional analysis and programs regarding the City's Code required "findings" for residential projects**

*Proposed Housing Element Modification:* Staff evaluated the City's findings for discretionary approvals that may apply to housing projects (such as a Master Plan, Design Review etc.) and determined that the findings do not adversely affect housing opportunities due to, for example, the denial of projects based on the strict interpretation of the findings' language. Nonetheless, some of the language used in findings may be interpreted broadly and could be modified for clarity. As such, new Program 3S was added.

- **Program 3S: Review and Revise Findings**
  - For housing development land use entitlements that require findings pursuant to the Zoning Code, this program commits the City to review and revise findings language that is capable of being interpreted broadly, with the goal of improving housing cost, supply, timing of approvals, or approval certainty.

- **HCD requested additional information regarding Emergency Shelters and programs regarding Permanent Supportive Housing**

*Proposed Housing Element Modification:* Staff added additional information clarifying that emergency shelters are already allowed by right in the Planned Development Industrial (PDI) zone and provided additional data regarding hazards and available parcels in this zone. In response to State comments, **Program 2J** was also added. This program commits the City to modifying its Zoning Code to include "transitional and supportive housing" in its land use matrix and to allow such uses in a manner that complies with State law.

- **HCD requested additional information and programs regarding the City's Reasonable Accommodation procedures, the definition of Single Housekeeping Unit, and Group Home regulations**

*Proposed Housing Element Modification:* In response to State comments, staff included additional information, modified Program 2N, and added Programs 2O and 2P as shown below.

- **Program 2N: Reasonable Accommodation**

*"The City has completed an analysis of its Reasonable Accommodation process in **Section 3** of this Housing Element. By the nature of Reasonable Accommodation requests and the range of potential modifications that could need to be accommodated, the City has to evaluate each request individually. This process is described within the City's Zoning Code and persons may contact the City's planning department for assistance with requests. The City will review and consider revisions to its Reasonable Accommodation process to be consistent with State and federal fair housing requirements.*

**Objectives:**

- *Review and revise the Reasonable Accommodation procedure to promote access to housing for persons with disabilities, address potential constraints and establish potential objective standards, and provide guidance and amend as necessary to promote greater*



*certainty on how approval findings will be implemented.*

- *Meet with local organizations and developers to promote access to housing for persons with disabilities and address potential constraints.”*

○ **Program 2O: Definition of Single Housekeeping Unit**

*“The City’s definitions of “family” and “single housekeeping unit” within the zoning code do not differentiate between related and unrelated individuals, or between disabled and non-disabled individuals, living together. Notwithstanding, in order to promote flexibility to accommodate residents with different living conditions, the City will review and consider revisions to its zoning code per the objectives below.*

**Objectives:**

- *Review and revise the definition of “single housekeeping unit” within the zoning code to provide greater flexibility in consideration of accommodating a variety of household situations for related and unrelated individuals living together.”*

○ **Program 2P: Group Homes**

*“The City has completed an analysis of its regulations applicable to group homes in **Section 3** of this Housing Element. Group homes are allowed in all residential zoning districts through a conditional or special use permit. The City will review and consider revisions to its zoning code applicable to group homes per the objectives below.*

**Objectives:**

- *Review and revise the City’s zoning code and application procedures applicable to group homes to promote objectivity and greater approval certainty.”*

- **HCD requested modifications to Housing Element Programs 3B (Fairview Development Center), 3C and 3D related to required rezoning, and Program 3G (the City-wide vote requirement).**

**Proposed Housing Element Modification:**

○ **Program 3B: Fairview Development Center (FDC)**

- Program 3B was modified to clarify the City’s intent to facilitate development on the FDC property, including rezoning, and establishing incentives and expedited processing. The revisions also clarify that if the rezoning of FDC does not occur, the City is obligated to identify other sites to make up the shortfall. The program was also revised to include updated information regarding the City Council’s October 2022 approval of an agreement to accept \$3.5 Million in State funds to manage and lead establishment of a Specific Plan for the FDC site in coordination with the State. A Request for Proposals (RFP) will be released by year end.

○ **Programs 3C (Update the North Costa Mesa Specific Plan) and Program 3D (Update the City’s Urban Plans and Overlays):**



- Programs 3C and 3D were modified to clarify that updating these plans consistent with the Housing Element is necessary and required to meet the City's RHNA allocation.
- **Program 3G: Address the City-wide Vote Requirement in Relation to Housing Element Compliance**

In its December comment letter, State HCD stated that Measure Y is “clearly a constraint on development and conflicts with meeting state requirements. The element must include a specific analysis of the impacts on housing cost, supply, affordability, timing and approval certainty. Based on this analysis, the element must include programs to address this constraint in addition to programs to make sites available to accommodate the RHNA.” Staff amended the program adding specific “milestones” and a timeline as requested by the State.

In its April comment letter, the State HCD has requested the City “commit to adopt the various planning amendments, alternative actions if the appropriate zoning is not complete and provide parameters that the ballot measure or other actions will be undertaken to address this fundamental constraint to housing development (in addition to the RHNA requirements).”

As such, the City has modified Program 3G to clarify that if there remains a shortfall of sites after a Ballot Measure vote, the City will request an opinion from the State's Attorney General's Office as to the City's options. It also adds language stating that the City will “evaluate and pursue various options to minimize the constraints of a city-wide vote requirement on housing by providing the City Council greater discretion in approving housing and affordable housing...” Program 3G, as revised, is shown below.

**“PROGRAM 3G: Address City-wide Vote Requirement in Relation to Housing Element Compliance**

*As it exists upon adoption of the 2021 2029 Costa Mesa Housing Element, the City's Municipal Code requires voter approval of certain changes in land use, defined as those projects that amend, change or replace the General Plan, the Zoning Code, a specific plan, or an overlay plan, (collectively, legislative changes) and that involve any one of the following changes: adds 40 or more dwelling units, generates more than 200 additional average daily trips; increases the volume/capacity of an intersection based on specified formulas; changes the intersection capacity utilization or level of service based on specified formulas; adds 10,000 square feet of retail, office or other nonresidential; or, where the proposed project, combined with other projects within 8 years and a half mile of each other, meet the above criteria. Additionally, voter approval is required for projects that involve one of the above legislative changes and: changes from public uses to private uses under specified circumstances; land designated as utility right of way under specified circumstances; land donated, bequeathed, or otherwise granted to the City; land used or designated for Costa Mesa school property; or land owned, controlled, or managed by the City.*

*Through extensive community outreach with Costa Mesa residents, housing advocates, and members of the development community, the City of Costa Mesa has continued to*

contemplate the role of the City-wide vote requirements in relation to the City's 2021 2029 Housing Element Update. State HCD has identified the City-wide vote process as a clear constraint to the future development of residential uses within the City, a constraint to implementing the land use and zoning changes necessary to achieve State mandated compliance with the RHNA allocation, and also conflicts with meeting State housing requirements. The City recognizes that it must, in coordination with guidance from the City Attorney and input from the community, determine a path forward to be able to adopt the subsequent changes to specific plans, urban plans, and overlays that are necessary to implement the City's adopted Housing Element and meet the City's RHNA allocation.

The City may move forward with adoption of a state-mandated Housing Element Update; however, it is not clear how the City-wide vote requirement affects the associated rezones and revisions to existing specific plans, urban plans, and overlays included as program actions within the Housing Element.

The City will take the following steps to identify and address specific ways in which the City-wide vote process functions as a constraint to housing compliance, the city's housing goals, and other shared community goals.

<b>MILESTONES</b>	<b>TIMING FOR COMPLETION</b>
(1) Engage the community and other stakeholders, and complete legal analysis necessary to identify appropriate modifications to the City's Municipal Code requirement for voter approval	Complete by June 2022
(2) Prepare ballot measure language and obtain City Council approval for placement of modifications on the ballot for the November 2022 general election.	Complete by August 2022
(3) Inclusion of the proposed measure on the Ballot of Local Election.	Complete by November 2022
(4) Creation and adoption of an inclusionary housing ordinance. The Municipal Code exempts "affordable housing proposals required by state or federal law" from the City-wide vote requirement. A City Council- approved inclusionary housing ordinance provides an opportunity to address affordable housing needs City-wide.	Within 12 months of final adoption of the Housing Element, consistent with Program 2A
(5) Engage in a community planning and visioning process. Prepare General Plan amendments, rezones, and revisions to existing specific plans, urban plans, and overlays included as program actions necessary to meet the City's RHNA allocation as identified within the Housing Element. Complete appropriate technical studies and CEQA compliance documents. Obtain City Council approval.	Complete by June 2025
(6) If there is a continued shortfall of sites after a Ballot Measure vote, the City will request an opinion from the State's Attorney General's Office as to the City's options.	Complete by December 2025

*In addition to these actions, beginning in 2022 and in conjunction with the City Attorney's Office, the City will evaluate and pursue various options to minimize the constraints of a city-wide vote requirement on housing by providing the City Council greater discretion in approving housing and affordable housing projects to comply with all requirements in State Housing Element law without further ballot initiative.*

**Objective:**

- *Minimize the constraint of a city-wide vote requirement on creation of housing including affordable housing through the modification of existing City overlays, urban plan areas, and specific plans to rezone candidate housing sites that can accommodate affordable housing and a variety of mixed use/ housing options near jobs and transit. By 2025, initiate a ballot measure, or other alternative option, to provide City Council greater discretion in approving affordable housing and mixed use/ housing options in appropriate locations."*

**Overrule of ALUC's Inconsistency Determination**

Pursuant to PUC Section 21676, on April 5, 2022, the City Council made the findings that the proposed Housing Element is consistent with the purpose of the AELUP as provided below:

- *"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."*
- *"It 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."*

As indicated in the "Background" section of this report, City staff forwarded to the ALUC and the Caltrans Division of Aeronautics the City Council decision and adopted findings to "overrule" ALUC's determination, and both agencies responded with comments. Staff has specifically responded to these comments in Attachment 5 - "*City Responses to Comments*." Below is a summary of the ALUC and the Caltrans Division of Aeronautics comments and staff responses.

**ALUC's Comment Letter**

The ALUC's comments related to two primary issues: (1) noise, and (2) safety hazards created by changing certain Housing Element sites land use from commercial/mixed use to residential in close proximity to John Wayne Airport.

In summary, the ALUC determined that the City's assessment for overrule regarding noise was not problematic and agreed that the City's Noise Element adequately addresses the interface of potential residential development and airport noise impacts.

The ALUC comments regarding safety hazards are specifically focused on 2021-2029 6th Cycle

Housing Element proposed housing sites located in the North Costa Mesa Specific Plan area. The ALUC contends that because the North Costa Mesa Specific Plan permits building heights in excess of the JWA Horizontal Surface (141 to 145 feet), that these housing sites present a “safety hazard.” However, the Public Utilities Code Section 21676 exempts “land use measures” for development in areas that are “already devoted to incompatible uses.” The North Costa Mesa Specific Plan area is approved for a hotel/residential development project of 304 feet, and is also developed with the Plaza Tower and Center Tower which exceed 20 stories. Since the North Costa Mesa Specific Plan area is already entitled and developed (“devoted”) for residential development and uses that exceed the JWA Horizontal Surface, this PUC provision is not applicable and the Housing Element is consistent with the “purpose” outlined in PUC Section 21670.

Further, the Housing Element makes no changes to height standards already adopted as part of the North Costa Mesa Specific Plan many years ago. The North Costa Mesa Specific Plan only allows residential uses at heights taller than the ALUC’s Horizontal Surface guideline after it has consulted with the Caltrans Division of Aeronautics and received a determination of “no hazard.” The projects already built at such heights in the North Costa Mesa area went through this process and received such a determination”. As such, this issue is sufficiently addressed by existing regulations and no change is proposed.

#### Caltrans Division of Aeronautics Comment Letter

The Caltrans Division of Aeronautics’ letter primarily comments that the City’s findings related to Public Utilities Code Section 21670 are “not consistent with the planning regulations in the Government Code.” Specifically, the Division’s comments reference the California Land Use regulation 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 “override” process, and therefore are not applicable to the “override.” Caltrans also broadly discusses the ALUC comment regarding PUC Purpose No. 2 relating to the housing sites in the North Costa Mesa Specific Plan Area; however, and as indicated above, since the North Costa Mesa Specific Plan area is already entitled and developed (“devoted”) for residential development and uses that exceed the JWA Horizontal Surface, this PUC provision is not applicable and the Housing Element is consistent with the “purpose” outlined in PUC Section 21670.

#### Staff Recommendation - ALUC Inconsistency Determination

City staff have thoroughly considered the comments by the ALUC and the Caltrans Division of Aeronautics in regard to the proposed Housing Element consistency with the PUC provisions. As further provided above, the ALUC’s and Caltrans’ comments that the proposed 2021-2029 Sixth Cycle Housing Element is inconsistent with the AELUP “purpose” is generally inaccurate. Staff is thus recommending that the City Council override the ALUCs determination. In order to effectuate the “override,” staff is recommending that the City Council adopt the proposed Resolution provided as Attachment 3, which includes the same findings the City Council previously reviewed and adopted on April 5, 2022.

#### Next Steps

Staff recommends that the City Council adopt the Resolution overruling ALUC’s inconsistency

determination, and adopt the Resolution approving the Housing Element, as revised.

After City Council adoption, the Housing Element, as revised, will be forwarded to the HCD for its review and certification. State HCD has up to 60 days to complete its review.

After certification, Development Services staff will process for Planning Commission and City Council review subsequent General Plan land use and zoning code amendments as required by the Housing Element. This effort will begin with a community outreach and visioning process.

In addition, City staff and various consultant teams will implement the other required Housing Element programs and actions. There are over 47 program actions identified in the Housing Element, which must be implemented during the eight year planning period. Most programs are required to be completed within the first two to three years of the Housing Element planning period (i.e., by the end of 2025). Compliance with such timelines will require a significant commitment of future City staff time and resources.

### **ENVIRONMENTAL DETERMINATION:**

In accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, an Initial Study was prepared to evaluate the potential environmental effects associated with the City of Costa Mesa 2021-2029 Housing Element Update. The Initial Study/Mitigated Negative Declaration (IS/MND) was circulated for public comments on October 29, 2021. The public comment period ended on November 29, 2021. On February 1, 2022, after consideration of a Planning Commission recommendation and public comments, the City Council adopted and approved the Initial Study/Mitigated Negative Declaration along with the associated Mitigation Monitoring and Reporting Program (MMRP). Pursuant to Government Code Section 15162(a), if changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation. Pursuant to CEQA Guidelines Section 15162(a)(1-3), the City as the lead agency has determined that none of the proposed revisions to the Housing Element require subsequent environmental analysis. Therefore, no further documentation is necessary.

### **ALTERNATIVES:**

The City Council alternative actions include:

1. Adopting the Resolutions as proposed;
2. Adopting the Resolutions with modifications to the Housing Element Update; or
3. Not adopting the Resolutions.

Not Adopting the Housing Element update and not receiving State certification would make the City out of compliance with State Housing Element law and would subject the City to potential litigation and other enforcement actions by the State.

### **FISCAL REVIEW:**

The adoption of the Housing Element will have no impact to the City's General Fund. A non-compliant Housing Element may affect the City's ability to receive certain federal, State and regional funding programs that require or consider housing element compliance for eligibility or competitive ranking purposes.

**LEGAL REVIEW:**

This report has been approved as to form by the City Attorney's Office.

**CITY COUNCIL GOALS AND PRIORITIES:**

This item supports the following City Council Goal:

- Diversify, stabilize and increase housing to reflect community needs.

**CONCLUSION:**

Staff recommends the City Council adopt the Resolution to overrule the Orange County ALUC's March 17, 2022 Inconsistency Determination and adopt the Resolution approving the 2021-2029 Housing Element, as revised.

After adoption, the Housing Element, as revised, will be forwarded to the State HCD for certification. After certification by the State, the City will begin implementing the required Housing Element plan and program actions.