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July 9, 2007

Mr. Brenton K. Lobner
General Counsel
San Diego County Regional Airport Authority
PO Box 82776
San Diego, CA 92138-2776

Dear Mr. Lobner:

*City's Duty to Submit Projects and Plans to the
Airport Land Use Commission for Consistency Determination*

Recently, City Attorney Mike Aguirre spoke with you concerning the importance of the City's compliance with aviation safety regulations and the need to ensure future compliance with requirements under the California Public Utilities Code [PUC] for submission of consistency determinations to the San Diego Airport Authority [Airport Authority] as the Region's Airport Land Use Commission [ALUC].

As you are aware, although the City of San Diego through its community planning processes and zoning ordinances retains land use control within the Airport Influence Area [AIA], under the California Public Utilities Code, the ALUC has two specific duties:

- Preparation and adoption of airport land use compatibility plans and
- Review of certain local agency land use actions and airport plans for consistency with the compatibility plan.

The primary purpose is to preserve and maintain the integrity of aviation safety for the public and the aviation community. It is, without question, a matter of national security and one that is of utmost importance to the City of San Diego.

In this regard, it is expected, and required, that the City's General Plan and Specific Plans will be consistent with the ALUC's compatibility plans for the airports within its jurisdiction. See PUC Sections 21676(b) and 21676.5(a). Under California law, adoption or amendment of a

general plan, specific plan, zoning ordinance, building regulations, or other land use ordinance or regulations which affect land within an airport area of influence as defined by the ALUC must be submitted to the ALUC for review prior to final approval. *See* PUC Section 21676(b) and Government Code Section 65302.3. To be fully consistent with the ALUC's compatibility plans, the City's General Plan:

- Must not have any direct conflicts with the compatibility plans; and
- Must delineate a mechanism or process for ensuring that individual land use development proposals comply with the ALUC criteria.

See Page Summary -12 and Pages 5-3 & 5-15 of *California Airport Land Use Planning Handbook* (January 2002). Compatibility can be achieved by incorporating policies into existing general plan elements; adopting a general plan airport element; adopting the compatibility plan as a specific plan; adopting the compatibility plan as a stand-alone document; or, adopting an airport combining district or overlay zoning ordinance. *Id* at Page Summary-12 and Pages 4-9, 4-16 & 5-10. A failure to comply means the City is required to continue to submit individual land use development actions to the ALUC for review before City approval. *See* PUC Section 21676.5(b). Only after consistency has been achieved will referral of individual development proposals become voluntary. *See* PUC Sections 21676.5(a) and 21676(b).

In accordance with state law, the Airport Authority has established a written development review process for consistency determinations for County Airports within its jurisdiction. These procedures are found in Section 8.30 of Part 8.3 of Article 8 of Airport Authority Rules and Regulations. Pursuant to these regulations, all requests by the City to the Airport Authority for project review are required to be submitted in writing and shall state fully and fairly the reason for the referral and shall include the names, addresses and telephone numbers of all applicants, project location and assessor's parcel number, a detailed project description, site plans, maps, heights of buildings, any Environmental Documentation and any other material necessary to fully understand the matter for which a project review is being requested. This information must be included on the form entitled "Application for ALUC Determination of Consistency." *See also* PUC Section 21675.2(b) & (c).

Furthermore, with respect to the City Attorney's letter of January 28, 2004 from Elisa A. Cusato, said letter is hereby withdrawn. Under California law, the Airport Authority's Comprehensive Land Use Plan for San Diego International Airport applies to the Naval Training Center [NTC] site. The Airport Authority, as the ALUC, has responsibility for determining consistency with respect to projects within the Naval Training Center [NTC]. Until such time as the City submits a request for consistency determination with respect to the NTC Precise Plan, or amendments thereto, the City must continue to seek consistency review from the Airport Authority for individual development projects proposed within NTC.

Mr. Brenton K. Lobner

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It is the intent of the Office of the City Attorney to work with the City of San Diego to ensure full compliance with these requirements.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By

Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev

cc: Honorable Jerry Sanders, Mayor, City of San Diego
Council Members, City of San Diego

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