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April 15, 2019

VIA ELECTRONIC & REGULAR MAIL
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Mr. John Clarey, Chair
Attn: Ms. Aida Lopez
Orange County Airport Commission
3160 Airway Avenue
Costa Mesa, CA 92626

Re: April 17, 2019 Airport Commission Hearing - Agenda Item No. 5 – Adopt Resolutions for EIR 627 & General Aviation Improvement Program (ASR 19-000429)

Dear Chairperson Clarey and Honorable Commission Members:

We submit this letter on behalf of the City of Newport Beach (City) regarding the above-referenced Agenda Item No. 5. For the reasons outlined below, the City requests that the Commission take no action on Agenda Item No. 5 at its hearing on April 17, 2019, and continue the item to a date certain after issuing a corrected notice of public hearing as required by the Brown Act. (See Gov. Code, § 54950.)

Agenda Item No. 5 proposes that the Commission “Adopt Resolutions For EIR 627 and General Aviation Improvement Program (ASR 19-000429)” and act, specifically, to certify the Environmental Impact Report (EIR) as adequate, adopt Findings of Fact and a Statement of Overriding Considerations, and adopt Alternative 1 as the Project. Other statements in the Agenda Staff Report, however, indicate that the report was drafted to communicate the Commission’s intent to make a recommendation to the County Board of Supervisors (Board). (See Agenda Staff Report, pp. 2 [“The first recommended action to the Board is to adopt the proposed CEQA Certification Resolution...”], 3 [“Alternative 1 is recommended to the Board”], 6 [same].)

If the Commission intends to issue one or more recommendations to the Board, the Notice of Public Hearing must be revised and reissued, and the hearing continued, to make that clear to the public and interested stakeholders. The Agenda Staff Report must also make the proposed Attachments (A-D) available for review. The Attachments are not available online. The Brown Act requires that the Commission post a meeting agenda, which includes a brief description of each item of business, 72 hours prior to the meeting. (See Gov. Code, § 54954.2, subd. (a)(1).) Writings upon which the Commission reviews or relies on must also be circulated to the public when distributed to a majority of members of the Commission. (Gov. Code, § 54957.5, subd. (a).) “No

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action or discussion shall be undertaken on any item not appearing on the posted agenda.” (Gov. Code, § 54954.2, subd. (a)(3); see also *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1175 – 1178 [public notice of hearing invalid for failing to describe each item of business to be transacted or discussed at the meeting, including adoption of a MND].)

If, however, Agenda Item No. 5 is accurate, and the Commission intends to take action to adopt a resolution certifying the EIR as adequate under CEQA, adopting Alternative 1 and the CEQA Findings of Fact and Statement of Overriding Considerations, such action would exceed the scope of the Commission’s authority as an advisory agency to the Board as set forth in Orange County Code Section 2-1-19, which provides, in relevant part, that:

The Airport Commission *shall be advisory to the Board* and shall have powers:

- (a) *To recommend* to the Board plans for the development, maintenance, and operation of John Wayne Airport and other airports which may be acquired or operated by the County.
- (b) *To advise* the Board and make recommendations on any matter pertaining to airports or air transportation.

Agenda Item No. 5 therefore improperly proposes that the Airport Commission step into the shoes of the Board as lead agency under CEQA. Not only would such action violation the County Code, it would be impermissible under CEQA. (Pub. Resources Code, § 21067 [“Lead agency” means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment]; see also *Planning & Conservation League v. Dep’t of Water Resources* (2000) 83 Cal. App. 4th 892, 907 [issuing writ requiring DWR to serve as lead agency for purposes of preparing and certifying EIR], relying on *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779 [“Neither the CEQA nor the state guidelines authorize the city council to delegate its review and consideration function to another body. Delegation is inconsistent with the purpose of the review and consideration function since it insulates the members of the council from public awareness and possible reaction to the individual members’ environmental and economic values. Delegation is inconsistent with the purposes of the EIR itself”].)

We also note that the County only very recently released the Final EIR for public review - on April 9, 2019. Even if the Airport Commission had authority to certify the EIR as adequate under CEQA, which it does not, a lead agency must allow at least 10 days for review of the proposed responses to comments submitted by public agencies on a

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Draft EIR prior to certifying the Final EIR. (Pub. Resources Code, § 21092.5.) Ten days have not yet passed.

We therefore request that the Commission postpone any action on Agenda Item No. 5 at the April 17th hearing, issue a new public notice identifying any future action item as making a recommendation to the Board, consistent with the Brown Act, and continue the item to a date certain. Thank you for your consideration of our comments.

Very truly yours,



Andrea K. Leisy