RMM

REMY | MOOSE | MANLEY LLP

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June 21, 2019

Via Electronic & U.S. Mail
response@ocgov.com

Ms. Lisa A. Bartlett, Chairwoman
Attn: Robin Stieler
Orange County Board of Supervisors
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Re: June 25, 2019 - Agenda Item No. 45 Environmental Impact Report 627; General Aviation Improvement Project (GAIP) – John Wayne Airport (SNA)

Dear Chairwoman Bartlett and Honorable Members of the Board:

Our client, City of Newport Beach (City), remains deeply concerned with the proposed approval of Alternative 1 and the corresponding reduction in single and multi-engine piston general aviation aircraft that would result in favor of an increase in turbo (business) jet aircraft. In further reviewing EIR 627, we noticed that the baseline assumptions used in EIR 627 for existing jet aircraft at the Airport conflict with the FAA's definition of "Based Aircraft" and evidence that the actual number in October 2016 was likely much higher. As such, the EIR results in understating the environmental effects of Alternative 1 under the existing plus project future cumulative impact scenarios.

Specifically, recent data from the FAA Airport Master Record (Form 5010-1) (5/23/19) shows SNA currently has 108 Jet Based Aircraft. (Attachment A.) This number is much higher than the 65 Business/Private Jet baseline (Oct. 2016) assumption included in the EIR and used, in part, to identify the future estimated number of Business/Private Jets under the Proposed Project and Alternative 1. Considering 43 more Business/Jet Aircraft are actually "Based" at the Airport today (a little over 2 ½ years later), it is logical to conclude that the October 2016 assumption of 65 jets significantly underestimated the actual number of jet aircraft "Based" at the Airport in October 2016.

The Draft EIR General Aviation Forecasting and Analysis Technical Report describes the data sources considered when arriving at the baseline assumptions, relying on data provided by the Airport (N-number records) and the type of aircraft and engine type registered with the FAA. (See DEIR, Appendix C, pp. 24-26, B-1 thru B-3.) The Draft EIR explains that other (more regional and statewide) data sources were not combined with the historic data obtained from the FAA TAF or the numbers from the Airport "in view of the inconsistency in reporting year and how the aircraft are

categorized." (Appendix C, p. 24.) A summary of observations also notes that the "2015, 2016 and 2017 records from FAA TAF have underestimated the actual number based aircraft at SNA." (*Ibid.*) The inconsistencies in reporting "Based Aircraft" appear to be why the 2016 baseline count for Turbo Jets was deflated.

For inventory purposes, the FAA defines "Based Aircraft" as those that are stored at an airport. Specifically, "*Based aircraft are aircraft that are 'operational and airworthy', which are based at an airport for a majority of the year.*" In other words, aircraft that are operational and airworthy and based at an airport for greater than 6 months each year. (See Attachment B.)

The Draft EIR, however, states that "A based aircraft is an aircraft that is leasing aircraft storage from an airport, such as a tie-down area or hanger." (DEIR, p. 1-3, fn. 3.) As explained below, and in order to ensure an accurate baseline and cumulative impact analysis in the EIR, the Board should require staff to revisit the baseline assumptions using the FAA's definition of "Based Aircraft" which was not used when preparing the EIR.

The inadequacy of the existing + project cumulative impacts analysis is reflected by the EIR's future baseline assumptions, which assume it will take over 7-10 more years (or more) to realize 100 Business/Jet Aircraft (Turbo Jets) "Based" at SNA. (See Draft EIR Appendix C, p. 38 (Table 14), assuming 89 Turbo Jets in 2026 and 141 Turbo Jets in 2040; see also Draft EIR Table 3-1.) Considering 108 Jet Based Aircraft occupy SNA today, the "Based Aircraft" assumptions and the future year annual operation forecast assumptions must be revisited along with the modeling of Alternative 1 for new potentially significant adverse cumulative noise, air quality and land use impacts; including, whether any new significant adverse impacts would occur earlier in time because of the increased number of jets over those assumed in the EIR, thereby requiring the imposition of mitigation measures at an earlier date.

Without this analysis, the EIR's cumulative impacts analysis is understated and inadequate under CEQA because the erroneous baseline assumptions are carried forward into the future baseline projections. To properly evaluate a project's cumulative impacts, the lead agency must make two determinations: (1) whether the combined effects from both the proposed project and other projects would be cumulatively significant and, if so, (2) whether the proposed project's incremental effects are cumulatively considerable. (CEQA Guidelines, § 15130, subd. (a).)

In *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 657-663, the court held that an EIR prepared for the expansion of an aggregate mine failed to adequately describe the existing environmental baseline and, as such, failed to adequately assess the project's impact on groundwater pumping during peak operations. In other words, the lack of information about the baseline made it impossible for the public and decisionmakers to understand the project's potential to increase groundwater use. Similarly, here, the lack of accurate information regarding the

number of Business/Jet Turbo "Based Aircraft" means that the impacts of the Proposed Project, including Alternative 1, have not been accurately assessed or disclosed. (See also *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955 ("An EIR must focus on impacts to the existing environment, not hypothetical situations"); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 47 Cal.4th 310, 328 ("[T]he comparison must be between existing physical conditions without the [project] and the conditions expected to be produced by the project. Without such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates"); *Save our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001)87 Cal.App.4th 99, 121 ("[T]he impacts of the project must be measured against the 'real conditions on the ground'").)

In conclusion, rather than adopt Alternative 1 as proposed, we urge the Board to adopt Alternative 3 or a modified (revised alternative) solution agreeable to the City and other aligned stakeholders. The Board may do so without triggering the need for additional environmental review under CEQA if the revised alternative falls within the envelope of the EIR's analysis. The courts have long recognized that the CEQA "process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) The Board therefore can, and should, adopt a revised alternative that maintains the current general aviation mix of light general aviation aircraft (single and twin engine) and general aviation jets.

Thank you in advance for your consideration of these comments. Please contact me or Aaron Harp if you want to discuss.

Very truly yours,

Andrea K. Leisy

Encl.
Cc: Aaron Harp, City Attorney

June 21, 2019 Remy Moose Manley Letter to the Orange County Board of Supervisors

ATTACHMENT A

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT MASTER RECORD

PRINT DATE: 6/5/2019
AFD EFF 05/23/2019
FORM APPROVED OMB 2120-0015

> 1 ASSOC CITY: SANTA ANA 4 STATE: CA LOC ID: SNA FAA SITE NR: 02230.*A
> 2 AIRPORT NAME: JOHN WAYNE AIRPORT-ORANGE COUNTY 5 COUNTY: ORANGE CA
3 CBD TO AIRPORT (NM): 04 S 6 REGION/ADO: AWP/LAX 7 SECT AERO CHT: LOS ANGELES

GENERAL

10 OWNERSHIP: PUBLIC
> 11 OWNER: ORANGE COUNTY
> 12 ADDRESS: 3160 AIRWAY AVENUE
COSTA MESA, CA 92626
> 13 PHONE NR: 949-252-5171
> 14 MANAGER: BARRY A. RONDINELLA
> 15 ADDRESS: 3160 AIRWAY AVE
COSTA MESA, CA 92626
> 16 PHONE NR: 949-252-5171
> 17 ATTENDANCE SCHEDULE:
ALL ALL ALL

18 AIRPORT USE: PUBLIC
19 ARPT LAT: 33-40-32.4000N ESTIMATED
20 ARPT LONG: 117-52-05.6000W
21 ARPT ELEV: 56.1 SURVEYED
22 ACREAGE: 504
> 23 RIGHT TRAFFIC: 20R, 02R
> 24 NON-COMM LANDING: NO

25 NPIAS/FED AGREEMENTS: NGPY3
> 26 FAR 139 INDEX: I C S 05/1973

SERVICES

> 70 FUEL: 100LL A

> 71 AIRFRAME RPRS: MAJOR
> 72 PWR PLANT RPRS: MAJOR
> 73 BOTTLE OXYGEN: HIGH/LOW
> 74 BULK OXYGEN:
75 TSNT STORAGE: TIE
76 OTHER SERVICES:
AFRT, AMB, AVNCS, CHTR, INSTR, RNTL, SALES, SURV

FACILITIES

> 80 ARPT BCN: CG
> 81 ARPT LGT SKED : SEE RMK
BCN LGT SKED: SS-SR
> 82 UNICOM: 122.950
> 83 WIND INDICATOR: YES-L
84 SEGMENTED CIRCLE: YES
85 CONTROL TWR: YES
86 FSS: RIVERSIDE
87 FSS ON ARPT: NO

88 FSS PHONE NR:
89 TOLL FREE NR: 1-800-WX-BRIEF

BASED AIRCRAFT

90 SINGLE ENG:	373
91 MULTI ENG:	48
92 JET:	108
TOTAL:	529
93 HELICOPTERS:	20
94 GLIDERS:	2
95 MILITARY:	0
96 ULTRA-LIGHT:	0

OPERATIONS

100 AIR CARRIER:	93,660
102 AIR TAXI:	18,328
103 G A LOCAL:	112,047
104 G A ITNRNT:	91,895
105 MILITARY:	853
TOTAL:	316,783
OPERATIONS FOR 12 MONTHS ENDING:	12/31/2018

RUNWAY DATA

	02L/20R	02R/20L	20X	
> 30 RUNWAY INDENT:	5,701	2,887	0	
> 31 LENGTH:	150	75	0	
> 32 WIDTH:	ASPH-G	ASPH-G		
> 33 SURF TYPE-COND:	GRVD	GRVD		
> 34 SURF TREATMENT:	70.0	25.0		
35 GROSS WT: S	200.0	60.0		
36 (IN THSDS) D	300.0			
37 2D				
38 2D/2D2				
> 39 PCN:	89 /F/B/X/T	72 /F/B/X/T		

LIGHTING/APCH AIDS

> 40 EDGE INTENSITY:	HIGH	MED		
> 42 RWY MARK TYPE-COND:	PIR - G / PIR - G	BSC - G / BSC - G	- / -	- / -
> 43 VGSI:	P4L / P4L	/ P4L	/	/
44 THR CROSSING HGT	72 / 63	/ 26	/	/
45 VISUAL GLIDE ANGLE:	3.00 / 3.00	/ 3.00	/	/
> 46 CNTRLN-TDZ:	N - N / N - N	N - N / N - N	- / -	- / -
> 47 RVR-RVV:	R - N / T - N	- N / - N	- / -	- / -
> 48 REIL:	N / N	N / Y	/	/
> 49 APCH LIGHTS:	/ MALSR	/	/	/

OBSTRUCTION DATA

50 FAR 77 CATEGORY	C / PIR	A(V) / A(V)	/	/
> 51 DISPLACED THR:	/	/	/	/
> 52 CTLG OBSTN:	/	/ BLDG	/	/
> 53 OBSTN MARKED/LGTD:	/	/ L	/	/
> 54 HGT ABOVE RWY END:	/	/ 15	/	/
> 55 DIST FROM RWY END:	/	/ 500	/	/
> 56 CNTRLN OFFSET:	/	/ 115L	/	/
57 OBSTN CLNC SLOPE:	34:1 / 50:1	20:1 / 20:1	/	/
58 CLOSE-IN OBSTN:	N / N	N / N	N / N	/

DECLARED DISTANCES

> 60 TAKE OFF RUN AVBL (TORA):	5,701 / 5,701	2,887 / 2,887	/	/
> 61 TAKE OFF DIST AVBL (TODA):	5,701 / 5,701	2,887 / 2,887	/	/
> 62 ACLT STOP DIST AVBL (ASDA):	5,701 / 5,701	2,887 / 2,887	/	/
> 63 LNDG DIST AVBL (LDA):	5,701 / 5,701	2,887 / 2,887	/	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS

A 014 JEFFREY S. ROUNTREE, MGR, AIRSIDE OPNS (949) 252-5247.
A 024 OVERNIGHT TIE-DOWN FEE.
A 030 RY 02R/20L CLSD WHEN ATCT CLSD.
A 030 RY 20X CREATED TO SUPPORT OJW LDA ASSOCIATED WITH SNA ILS RY 20R.
A 081 WHEN ATCT CLSD ACTVT MALSR RY 20R & PAPI RYS 02L & 20R - CTAF.
A 110 THIS AIRPORT HAS BEEN SURVEYED BY THE NATIONAL GEODETIC SURVEY.
A 110-003 WHEN ATCT CLSD NO LCL TRNG OR TOUCH & GO OPNS.
A 110-004 BE ALERT TO BIRDS ON AND IN VICINITY OF ARPT.
A 110-006 TWY C GWT LMTD 60000 LBS.
A 110-011 MAINTAIN AT OR ABOVE 300 FT AGL UNTIL ESTABLISHED ON FINAL .
A 110-012 VFR ACFT: TO AVOID OVERFLIGHT OF RY 20R: RY 20L ARR FLY FINAL AT 15 DEG ANGLE TO RY; RY 20L DEPS TURN 15 DEG LEFT AT DEP END OF RY. TO AVOID OVERFLIGHT OF RY 02L: RY 02R DEPS TURN 15 DEG RIGHT AT FREEWAY.
A 110-014 FBO GENERAL AVIATION APRONS LIMITED TO MAX GWT OF 100,000 LBS (DUAL GEAR) AND WITH WINGSPANS LESS THAN 100 FT. GENERAL AVIATION AIRCRAFT PROHIBITED FROM USING ANY PORTION OF THE AIR CARRIER COMMERCIAL RAMP.
A 110-015 NOISE ABATEMENT PROCEDURES IN EFFECT CTC ARPT NOISE OFFICE (949) 252-5185.

111 INSPECTOR: (F) 112 LAST INSP: 01/11/2019 113 LAST INFO REQ:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT MASTER RECORD

PRINT DATE: 6/5/2019
AFD EFF 05/23/2019
FORM APPROVED OMB 2120-0015

> 1 ASSOC CITY: ***CONTINUED*** 4 STATE: CA LOC ID: SNA FAA SITE NR: 02230.*A
> 2 AIRPORT NAME: 5 COUNTY:
3 CBD TO AIRPORT (NM): 6 REGION/ADO: AWP/LAX 7 SECT AERO CHT:

GENERAL

10 OWNERSHIP:
> 11 OWNER:
> 12 ADDRESS:

> 13 PHONE NR:
> 14 MANAGER:
> 15 ADDRESS:

> 16 PHONE NR:
> 17 ATTENDANCE SCHEDULE:

18 AIRPORT USE:
19 ARPT LAT:
20 ARPT LONG:
21 ARPT ELEV:
22 ACREAGE:
> 23 RIGHT TRAFFIC:
> 24 NON-COMM LANDING:

25 NPIAS/FED AGREEMENTS:
> 26 FAR 139 INDEX:

SERVICES

> 70 FUEL:

> 71 AIRFRAME RPRS:
> 72 PWR PLANT RPRS:
> 73 BOTTLE OXYGEN:
> 74 BULK OXYGEN:
75 TSNT STORAGE:
76 OTHER SERVICES:

FACILITIES

> 80 ARPT BCN:
> 81 ARPT LGT SKED :
BCN LGT SKED:
> 82 UNICOM:
> 83 WIND INDICATOR:
84 SEGMENTED CIRCLE:
85 CONTROL TWR:
86 FSS:
87 FSS ON ARPT:

88 FSS PHONE NR:
89 TOLL FREE NR:

BASED AIRCRAFT

90 SINGLE ENG:
91 MULTI ENG:
92 JET:
TOTAL:

93 HELICOPTERS:
94 GLIDERS:
95 MILITARY:
96 ULTRA-LIGHT:

OPERATIONS

100 AIR CARRIER:
102 AIR TAXI:
103 G A LOCAL:
104 G A ITNRNT:
105 MILITARY:
TOTAL:

OPERATIONS FOR
12 MONTHS
ENDING:

RUNWAY DATA

> 30 RUNWAY INDENT:				
> 31 LENGTH:				
> 32 WIDTH:				
> 33 SURF TYPE-COND:				
> 34 SURF TREATMENT:				
35 GROSS WT: S				
36 (IN THSDS) D				
37 2D				
38 2D/2D2				
> 39 PCN:				
LIGHTING/APCH AIDS				
> 40 EDGE INTENSITY:				
> 42 RWY MARK TYPE-COND:	- / -	- / -	- / -	- / -
> 43 VGSI:	/	/	/	/
44 THR CROSSING HGT	/	/	/	/
45 VISUAL GLIDE ANGLE:	/	/	/	/
> 46 CNTRLN-TDZ:	- / -	- / -	- / -	- / -
> 47 RVR-RVV:	- / -	- / -	- / -	- / -
> 48 REIL:	/	/	/	/
> 49 APCH LIGHTS:	/	/	/	/
OBSTRUCTION DATA				
50 FAR 77 CATEGORY	/	/	/	/
> 51 DISPLACED THR:	/	/	/	/
> 52 CTLG OBSTN:	/	/	/	/
> 53 OBSTN MARKED/LGTD:	/	/	/	/
> 54 HGT ABOVE RWY END:	/	/	/	/
> 55 DIST FROM RWY END:	/	/	/	/
> 56 CNTRLN OFFSET:	/	/	/	/
57 OBSTN CLNC SLOPE:	/	/	/	/
58 CLOSE-IN OBSTN:	/	/	/	/
DECLARED DISTANCES				
> 60 TAKE OFF RUN AVBL (TORA):	/	/	/	/
> 61 TAKE OFF DIST AVBL (TODA):	/	/	/	/
> 62 ACLT STOP DIST AVBL (ASDA):	/	/	/	/
> 63 LNDG DIST AVBL (LDA):	/	/	/	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

> 110 REMARKS

A 110-016 RY 02L/20R TPA 1,000 FT AGL SMALL ACFT; 1,500 FT AGL TURBINE ACFT OVER 12,500 LBS; RY 02R/20L TPA 800 FT AGL SMALL SGL ENG ACFT; 1000 FT AGL TWIN ENG ACFT.
A 110-017 ASDE-X IN USE. OPERATE TRANSPONDERS WITH ALTITUDE REPORTING MODE AND ADS-B (IF EQUIPPED) ENABLED ON ALL AIRPORT SURFACES.

111 INSPECTOR: (F) 112 LAST INSP: 01/11/2019 113 LAST INFO REQ:

June 21, 2019 Remy Moose Manley Letter to the Orange County Board of Supervisors

ATTACHMENT B

Federal Aviation
Administration

New York Airports District Office
159-30 Rockaway Blvd, Room 111
Jamaica, New York 11434
Telephone: 718-995-5770
Fax: 718-995-5790
https://www.faa.gov/airports/eastern/nyado_bulletin/

Re: Based Aircraft Inventory

Dear Airport Sponsor,

The purpose of this communication is to inform you of your responsibility to review and update, as needed, your based aircraft information at www.basedaircraft.com by **November 30, 2017**.

The verified based aircraft information will be used in the FAA's preparation of the next National Plan of Integrated Airport Systems (NPIAS) and *General Aviation Airports: A National Asset* (ASSET) Report to Congress.

The FAA is required to publish the NPIAS report every other year identifying the airports included in the NPIAS, the role they serve, and the amounts and type of development **eligible** for Federal funding under the Airport Improvement Program (AIP) over the next 5 years. Concurrently, the ASSET Report is prepared to review the unclassified airports' status.

****Please be reminded not to include aircraft associated with through-the-fence operations at your airport.**

Per the AIP Handbook, Table A-1 -Based Aircraft - *Per the FAA ASSET Report: General Aviation Airports: A National Asset, May 2012, Based Aircraft are aircraft that are stored at an airport.*

Based Aircraft – ASSET Report 2012, Glossary – ***Based aircraft*** *are aircraft that are "operational and airworthy", which are based at an airport for a majority of the year. This is the definition used by airports when reporting based aircraft on the website www.basedaircraft.com, National Based Aircraft Inventory Program (Airport Master Record, FAA Form 5010-1).* **(Aircraft based at an airport ≥6 months each year)**

A through-the-fence agreement allows people who own property with aircraft storage facilities near an airport to access the airport from off-airport property. Aircraft that are stored off airport, but are allowed to access airfield facilities via through-the-fence, should not be report to the FAA as 'based' at the airport.

If you have any questions, please contact your assigned ADO Planner.

Thank you.