

RESOLUTION NO. 15-**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-11-03, A CONDITIONAL USE PERMIT FOR A PRIVATE HELISTOP AT 3132 AIRWAY AVENUE**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Kevin A. Coleman, owner of real property located at 3132 Airway Avenue, requesting a Conditional Use Permit (CUP) Conditional Use Permit to install a 40-foot (long) x 40-foot (wide) helistop on the roof of an existing industrial building. The helistop will be located on a 6-foot high platform on the roof of an existing 19-foot high building. The proposed helistop was conceptually approved in 2011 by the Airport Land Use Commission (ALUC) and conditionally approved by the Federal Aviation Administration (FAA). This project was originally heard by the Planning Commission on August 8, 2011, who recommended denial, and subsequently withdrawn by the applicant prior to being heard by the City Council. The applicant is re-submitting the project for consideration; and

WHEREAS, on July 21, 2011 the Airport Land Use Commission for Orange County (ALUC) reviewed the applicant's request and found the proposed facility to be in conformance with the Airport Environs Land Use Plan (AELUP) and the AELUP for Heliports, on a 4-1 vote; and

WHEREAS, on March 13, 2011, the applicant obtained conditional approval from Caltrans Division of Aeronautics for the helistop design; and

WHEREAS, on June 11, 2011, the Federal Aviation Administration (FAA) conducted an airspace study as mandated under Part 157 of the Federal Aviation Regulations and found the site to be acceptable from an airspace utilization standpoint; and

WHEREAS, staff has confirmed that all of the above approvals continue to remain valid as long as no changes are proposed in the design of the helistop; and

WHEREAS, the proposed project was found to be categorically exempt under Section 15311, Class 11, Accessory Structures of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgment of the City of Costa Mesa; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 28, 2015 and the Commission, after considering the evidence and public testimony, recommended approval of PA-11-03 on a 5-0 vote; and

WHEREAS, a duly noticed public hearing was held by the City council on November 3, 2015; and

WHEREAS, California Public Utilities Code Section 21661.5 requires that the City Council approve the proposal to construct and operate a helistop located within the city boundaries before Caltrans Division of Aeronautics can issue its final approval; and

WHEREAS, the proposed helistop has conditionally complied with federal requirements, and a City Council resolution noting City approval of the helistop is required to finalize the State permitting process.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions contained in Exhibit B, the City Council hereby **APPROVES** Planning Application PA-11-03 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-11-03 and upon applicant's compliance with each and all of the conditions contained in Exhibit B as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED on this 3RD day of November, 2015.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

EXHIBIT A

FINDINGS (for approval)

1. The information presented substantially complies with Section 13-29(e) of the Costa Mesa Municipal Code in that:
 - a. The proposed use is compatible and harmonious with uses on-site as well as those on the surrounding properties.
 - b. Safety and compatibility of the design of the buildings, parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - c. The Industrial Park land use designation permits a wide range of uses, and the proposal is consistent with the General Plan. Approval of CUP would be consistent with the proximity of the subject property to John Wayne Airport.
 - d. The planning application is for a project-specific case and does not establish a precedent for future development.

Finding: The conditional use permit substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the area.

Facts in Support of Findings: Specifically, because of the proximity of the helistop to John Wayne Airport, the proposed facility is regulated by the California Public Utilities Code (PUC) and, in addition to City approval, requires approval by the Airport Land Use Commission for Orange County (ALUC), Caltrans Division of Aeronautics, and the Federal Aviation Administration (FAA).

In 1975, ALUC adopted the Airport Environs Land Use Plan (AELUP) which specifies permitted uses in proximity to the airport. The uses include the following general guidelines:

1. Uses not deemed to create adverse noise impacts.
2. Uses that will not concentrate people in areas with high potential for aircraft-related accidents.
3. Uses that will not adversely affect navigable airspace or aircraft operations.

On July 21, 2011, the Airport Land Use Commission for Orange County (ALUC) has determined that the proposed facility is consistent with the Airport Environs Land Use Plan (AELUP) and the AELUP for heliports, on a 4-1 vote. In addition, the applicant obtained conditional approval from Caltrans Division of Aeronautics on March 13, 2011, and an acceptable airspace study determination from the Federal Aviation Administration (FAA) on June 11, 2011. The modifications to the

building exterior to accommodate the helistop will not be visually intrusive to the existing development or surrounding properties. The presence of the helicopter on the roof of the building will not create an adverse visual impact to surrounding properties due to its proximity to the airport and distance from Airway Avenue. The use of the helistop is for a private helicopter only – the facility will not be open to the general public. No fueling, maintenance, or repair facilities are proposed. Granting the conditional use permit will not allow a use, density or intensity, which is not in accordance with the General Plan designation for the property.

3. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15311 for Accessory Structures.
4. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

- Plng. 1. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
2. The use shall be limited to the type of operation as described in the staff report. Any change in the operational characteristics including, but not limited to, the hours of operation and additional services provided, shall require review by the Planning Division and may require an amendment to the conditional use permit. Specifically, refueling and overnight maintenance in the helistop area are expressly prohibited. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
3. Any visible steel beams supporting the helistop shall be painted to match the existing building, subject to Planning Division approval.
4. A maximum of 2 arrivals and 2 departures per day with a maximum of 3 arrivals and 3 departures per week are permitted for the helistop. Hours of operation shall be 7:00 am-7:00 pm, Monday through Saturday, and 8:00 am-7:00 pm Sunday.
5. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or operator shall institute whatever security and operational measures are necessary to comply with this requirement.
6. Helistop noise levels shall not exceed the 65 dB CNEL maximum noise level as identified in the noise study.
7. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the Director of Economic & Development Services/Deputy CEO or his designee, any of the findings upon which the approval was based are no longer applicable.
8. The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any,

and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. The City shall have the right to choose its own legal counsel to represent the City's interests, and the applicant shall indemnify City for all such costs incurred by City.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- Plng. 1. The planning application herein approved shall be valid until revoked. The Development Services Director or his/her designee may refer the planning application to the Planning Commission for modification or revocation at any time if, in his/her opinion, any of the following circumstances exist: 1) the use is being operated in violation of the conditions of approval; 2) the use is being operated in violation of applicable laws or ordinances or 3) one or more of the findings upon which the approval was based are no longer applicable.
- 2. All noise-generating construction activities shall be limited to 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. Saturday. Noise-generating construction activities shall be prohibited on Sunday and the following Federal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 3. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
- Bldg. 4. Comply with the requirements of the adopted 2013 California Building Code, 2013 California Electrical Code, 2013 California Mechanical code , 2013 California Plumbing code, 2013 California Green Building Standards Code, and 2013 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa.
- Fire 5. Helistop shall comply with all requirements of the California Building Code and California Fire Code.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

- AQMD 1. Applicant shall contact the Air Quality Management District (AQMD) at (800) 288-7664 for potential additional conditions of development or for

additional permits required by AQMD.

RESOLUTION NO. PC-15-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA DENYING PLANNING APPLICATION PA-11-03, A CONDITIONAL USE PERMIT FOR A PRIVATE HELISTOP AT 3132 AIRWAY AVENUE

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Kevin A. Coleman, owner of real property located at 3132 Airway Avenue, requesting a Conditional Use Permit (CUP) to install a 40-foot (long) x 40-foot (wide) helistop on the roof of an existing industrial building. The helistop will be located on a 6-foot high platform on the roof of an existing 19-foot high building. The proposed helistop was conceptually approved in 2011 by the Airport Land Use Commission (ALUC) and conditionally approved by the Federal Aviation Administration (FAA). This project was originally heard by the Planning Commission on August 8, 2011, who recommended denial, and subsequently withdrawn by the applicant prior to being heard by the City Council. The applicant is re-submitting the project for consideration; and

WHEREAS, a duly noticed public hearing was held by the City Council on November 3, 2015.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, the Planning Commission hereby **RECOMMENDS DENIAL** by the City Council of Planning Application PA-11-03 with respect to the property described above.

PASSED AND ADOPTED on this 3RD day of November, 2015.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

EXHIBIT A

FINDINGS (for denial)

- A. The proposed project does not comply with Costa Mesa Municipal Code Section 13-29 (e) because:
- a. The proposed use is not compatible and harmonious with uses both on site and those on surrounding properties.
 - b. The project is not consistent with the General Plan.
- B. **Finding:** The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) because the proposed use is not compatible with developments in the same general area. Granting the conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Granting the conditional use permit will allow a use, density, or intensity which is not in accordance with the General Plan designation for the property.

Facts in Support of Findings:

- The potential noise impacts of the proposed helistop to surrounding properties had not been sufficiently identified or analyzed;
 - Although the subject site is not part of the JWA property or airport facility, the proposal constitutes an expansion of aircraft activities beyond the existing footprint of JWA;
 - Potential changes in the type of helicopter, i.e., the “quiet” helicopter proposed by the applicant versus the potential for a different, noisier, helicopter, could result in additional noise impacts to surrounding properties; and
 - The proposed use, i.e., a private helistop facility, provides no benefit to the citizens of Costa Mesa compared to helipads/helistops utilized by hospitals or law enforcement agencies.
- C. The Costa Mesa City Council has recommended denial of PA-11-03. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.