



CITY ATTORNEY'S OFFICE MEMORANDUM
NOT CONFIDENTIAL

TO: Councilmembers, City Manager, Assistant City Manager
FROM: City Attorney's Office
RE: Frequently Asked Questions Re Airport Closure and Measure LC
DATE: January 28, 2025

1. Does Council need to take any additional formal action to authorize closure of the Airport?

No, Council does not need to take any formal action to authorize closure of the Airport. On January 30, 2017, the U.S. Government, acting through the Federal Aviation Administration (FAA) and the City of Santa Monica (City) filed a Settlement Agreement/Consent Decree (the Consent Decree) with the Federal District Court for the Central District of California in *City of Santa Monica v. United States of America, et al.*, Case No. 13-CV-8046-JFW (C.D. cal.).

On February 1, 2017, the Court approved the Consent Decree and entered it as the judgment in *City of Santa Monica v. United States of America, et al.*, Case No. 13-CV-8046-JFW (C.D. Cal. Feb. 1, 2017). Pursuant to the terms of the Consent Decree, the City may, in its sole discretion at any time after December 31, 2028, cease to operate the Airport.

On February 28, 2017, Council adopted Resolution 11026 (CCS). The caption of this resolution states:

IMPLEMENTING THE CONSENT DECREE AND AUTHORIZING ALL ACTIONS NECESSARY TO ENSURE CLOSURE OF THE SANTA MONICA AIRPORT EFFECTIVE AS OF MIDNIGHT ON DECEMBER 31, 2028, AND THE SHORTENING OF THE SANTA MONICA AIRPORT RUNWAY PENDING CLOSURE.

Section 1 of Resolution 11026 states:

The City Manager, City Attorney and their staffs, consistent with the terms of the Consent Decree, shall take all actions necessary and proper to ensure that the Airport will cease to operate as an airport and shall be closed to all aeronautical use forever effective as of midnight on December 31, 2028.

Thus, the decision to close the Airport effective midnight on December 31, 2028, was already made, and no further Council action is required to authorize closure of the Airport.

2. What steps must be taken to close the Airport, assuming closure date effective on December 31, 2028?

City staff published an information item on steps to closure on April 15, 2024. This information item will be updated shortly after the January 28, 2025, Council meeting.

3. What is Measure LC?

Measure LC is a ballot measure that was approved by the Council for placement on the ballot and passed by Santa Monica voters on November 6, 2014.

The ballot question for Measure LC stated:

MEASURE LC: Shall the City Charter be amended to: (1) prohibit new development on Airport land, except for parks, public open spaces and public recreational facilities, until the voters approve limits on the uses and development that may occur on the land; and (2) affirm the Council's authority to manage the Airport and to close all or part of it?

The legal effect of the passage of Measure LC was to add City Charter Section 640 (Section 640), which states:

640. Regulation, Management and Closure of Santa Monica Airport and Future Use of Airport Land.

Subject only to limitations imposed by law, the Council shall have full authority, without voter approval, to regulate use of the Santa Monica Airport, manage Airport leaseholds, condition leases, and permanently close all or part of the Airport to aviation use.

If all or part of the Airport land is permanently closed to aviation use, no new development of that land shall be allowed until the voters have approved limits on the uses and development that may occur on the land. However, this section shall not prohibit the Council from approving the following on Airport land that has been permanently closed to aviation use: the development of parks, public open spaces, and public recreational facilities; and the maintenance and replacement of existing cultural, arts and education uses. (Emphasis added.)

The final language for Measure LC was approved by the Council on July 22, 2014.

4. When do the Measure LC limitations on new development go into effect?

The restrictions and voter approval requirements on new development would only apply once the Airport restrictions on land use development are no longer in effect due to permanent Airport closure. However, if the City were to sell the Airport land that is situated in the City of Los Angeles to a third-party post-closure, Measure LC would not apply to that land because that land would be subject to the land use and development restrictions of the City of Los Angeles once the City's ownership passes to a private third party. (Gov't Code § 53091; Lawler v. City of Redding (1992) 7 Cal.App.4th 778 (example of sovereign immunity from county general plan when city owned property within the county)). If land within Santa Monica is sold, Measure LC still applies, subject to any Surplus Land Act requirements (see Section 11, below).

5. Who determines what qualified uses do not require voter approval under Charter Section 640?

The City's Planning staff, under the supervision of the City Manager and with support from the City Attorney's Office and other City departments, will likely make recommendations to the Councilmembers as to what uses are consistent with the Measure LC voter requirement. But all final decisions will be made by the Council. Any development of Airport land that entails transfer of property to a private developer would require compliance with the California Surplus Land Act (See Section 11, below). (Cal. Gov't Code §§ 54220-54234).

6. How are the uses in Measure LC determined? Who determines this? Does the Zoning Code need to be updated/revised/consulted?

Characterization of the uses specifically called out in Charter Section 640 should be determined in accordance with the City's Zoning Code and established planning practices.

The term "use" is defined in the City's Zoning Code (SMMC Chapter 9) as follows:

Use. The purpose for which land or the premises of a building, structure, or facility thereon is designed, arranged, or intended, or for which it is or may be occupied or maintained. (SMMC § 9.52.020.2480).

Use, accessory. A use that is customarily associated with, and is incidental and subordinate to, the primary use and located on the same parcel as the primary use. (SMMC § 9.52.020.2490).

Use, primary. A primary, principal or dominant use established, or proposed to be established, on a parcel. In a mixed-use building, there may be more than one primary use. (SMMC § 9.52.020.2500).

A "use classification" is defined in the Zoning Code as follows:

Use classification. A system of classifying uses into a limited number of use types on the basis of common functional, product, or compatibility characteristics. All use types are grouped into the following categories: residential; public and semi-public; commercial; industrial; and transportation, communication, and utilities. See Chapter 9.51, Use Classifications. (SMMC § 9.52.020.2510).

"Educational, recreational, and cultural uses" are not specifically defined in the City's Zoning Code, but could arguably fall under the following definitions for existing use classifications in the City's Zoning Code, (SMMC § 9.52.020.2510), as follows:

Child Care and Early Education Facility. Establishments providing non-medical care for persons less than 18 years of age on a less than 24-hour basis other than family day care (small and large). This classification includes commercial and nonprofit nursery schools, preschools, day care facilities for children, and any other day care facility licensed by the State of California. See Division 3, Section 9.31.120, Child Care and Early Education Facilities, for further details.

College and Trade School. Institutions of higher education providing curricula of a general, religious or professional nature, typically granting recognized degrees, including conference centers and academic retreats associated with such institutions. This classification includes junior colleges, business and computer schools, management training, technical and trade schools, but excludes personal instructional services such as music lessons.

School. Facilities for primary or secondary education, including public schools, charter schools, and private and parochial schools.

Community Garden. An area of land managed and maintained by a public or nonprofit organization or a group of individuals to grow and harvest food crops and/or ornamental crops, such as flowers, for personal or group use, consumption, or donation. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members. Community gardens may be accessory to public or institutional uses such as parks, schools, community centers, or religious assembly uses. This classification does not include gardens that are on a property in residential use when access is limited to those who reside on the property. Community gardens do not include medical marijuana collectives.

Cultural Facility. Facilities engaged in activities to serve and promote aesthetic and educational interest in the community that are open to the public on a regular basis. This classification includes performing arts centers for theater, music, dance, and events; spaces for display or preservation of objects of interest in the arts or sciences; libraries; museums; historical sites; aquariums; art galleries; and zoos and botanical gardens. It does not include schools or institutions of higher education providing curricula of a general nature.

Park and Recreation Facility. Parks, playgrounds, recreation facilities, trails, wildlife preserves, and related open spaces, which are open to the general public. This classification also includes playing fields, courts, gymnasiums, swimming pools, picnic facilities, tennis courts, golf courses, and botanical gardens, as well as related food concessions or community centers within the facilities and restrooms within a primary structure or in an accessory structure on substantially similar recreational use or uses. A "recreational building" is defined as an incidental park structure such as a restroom and maintenance facility, community room, locker room and shower servicing persons using the beaches or ocean, a playing court, playground, picnic area, or public swimming pool. (SMMC § 9.20.070).

The Council could enact zoning provisions that apply uniquely to the Airport land as a zoning district. For example, the City's Zoning Code could be amended to define use classifications for *parks, public open spaces, and public recreational facilities* that apply uniquely to the Airport land. The Zoning Code could also be amended to clarify the

distinction between primary and accessory uses (e.g., a square foot limitation on accessory uses) on Airport land.

7. When a public vote is needed? For example, if there is a proposal to build a park with a food concession, does the food concession in the park require voter approval?

“Uses” are classified in the SMMC Zoning Code (Chapter 9) as primary and accessory. An accessory use is one which is dependent on or pertains to the principal or main use, and which may be considered an integral part of the primary use. The allowance of a primary use generally authorizes all uses normally accessory, auxiliary or incidental to it, and many examples may be found among the judicial decisions of uses deemed auxiliary, and of those considered not auxiliary to the primary use. (*Greenfield v. Board of City Planning Com’rs of Los Angeles* (1935) 6 Cal.App.2d 515 (1935)).

For example, the proposal to build a park with a food concession stand would need to be evaluated by Planning staff with advice from the City Attorney’s Office to determine the primary “use” within the meaning of the City’s Zoning Code. If the park is considered the primary use and the food concession considered an accessory or ancillary use, the proposal would not likely trigger voter approval because the primary “use” would be a park. If, however, the food concession was considered the primary use and the park an ancillary use (e.g., a play area outside a Mc Donald’s), then the proposal would likely trigger voter approval because the “use” would be a retail food establishment. As further described, below, “use” is a technical planning term that hinges on facts and circumstances particular to the proposed development. The ultimate approval for any proposed new use would be subject to Council oversight and, ultimately, judicial review as to conformance with Measure LC, if Council’s determination is challenged.

8. Is a pay-to-play activity considered recreational? If SMC wants to build dorms, is that educational? Is an amphitheater considered cultural?

As a general proposition, because use classifications are very broad and expansive, whether a proposed use fits a particular use classification is determined on a fact-specific basis and whether the primary use fits a use classification in the zoning code and whether other uses are in fact ancillary to the primary use. Established caselaw holds that a City’s legislative interpretation is entitled to deference. (*San Francisco Tomorrow v. City and County of San Francisco*, 228 Cal.App.4th 1239 (2014)).

Is a pay-to-play activity considered recreational?

There is nothing in the City’s Zoning Code and nothing in case law (that we are aware of) that comments on payment as a sole determinative factor as to whether a proposed recreational activity falls within the category “*parks, public open spaces, and public recreational facilities*”. By way of example, the City’s parks currently host recreational activities that entail fees for *public* participation. These activities can be viewed as customary to public park or open space activity, and do not negate the zoning designation as a park or open space. Conversely, allowing professional sports venues (primarily used for hosting games without public participation in the recreational activity) like arenas – which are privately operated but open to the public for a fee - could easily be viewed as

falling outside the City's customary park or open space activities and would likely invite numerous legal challenges, including claims that voter approval is required.

Is an amphitheater allowed without a vote under Measure LC?

Similarly, if the City desires to build an amphitheater post-Airport closure, which would constitute new development, the City would need to establish an evidentiary foundation as to how this proposed use constitutes “parks, public open spaces, or public recreational facilities” within the meaning of Measure LC. See, e.g., flow chart in Section 13, below.

9. How can buildings/structures be repurposed after partial or full closure? Can we re-purpose the building/structures after the airport closure? Or does LC restrict us from changing the buildings/structures in perpetuity?

Post Airport-closure, Charter section 640 requires voter approval of limits on uses and development that may occur before new development is allowed, except for development of parks, public open spaces, and public recreational facilities. Development is defined in the Zoning Code as follows:

[A]ny manmade change to improved or unimproved real estate, including, but not limited to, the division of a parcel of land into 2 or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, expansion, or enlargement of any structure; any mining, excavation, landfill or land disturbance; and any use or extension of the use of land.

Charter Section 640 also requires voter approval for redevelopment of the City's existing buildings once all or part of the Santa Monica Airport permanently closes, except no voter approval is required for *maintenance and replacement of existing cultural, arts and education uses*.

According to the legislative history of Measure LC, which was extensively researched by George Cardona, a prior interim City Attorney, prior to the permanent closure of the Airport land to aviation use, it was assumed that land would remain subject to the development limitations imposed by continuing operation of the Airport and after closure, Measure LC would impose similar limitations, subject to a return to the voter for future guidance.

The comments of the Councilmembers during deliberations for Measure LC on July 22, 2014, evidence concern by the Councilmembers that then-existing cultural, arts, and education uses not be unduly constrained by any size limitations on renovations of existing buildings to retain those uses. Thus, we believe that there is sufficient evidence to support the proposition that voter approval is not required to repurpose building/structures after Airport closure, including expansion, assuming that the the same site.

There is precedent in the City's established zoning districts to create definitions that apply uniquely to those districts. (SMMC Chapter 9.02). For example, in the Beach Overlay District, “recreational use” is defined as follows (The Beach Overlay District was created pursuant to Measure S, a voter initiative intended to limit development in the beach area generally west of Ocean Avenue.):

Any building or area within the Beach Overlay District currently in use as a recreational building or recreational area shall not be removed or demolished except to replace said building or area with open space or

improvements are made to maintain or replace “existing cultural, arts and education uses” as contemplated by Measure LC. Of course, a future ballot measure can comprehensively address all the Airport land, including new development and existing uses.

Since “use” does not necessarily correlate with specific tenants, the City can still begin new tenancies post-closure without voter approval if they fall within existing use classifications.

Staff has also asked, for clarification purposes, whether it is possible to add new development pre-Airport closure – for example, 10 new restaurants on Airport property. While the Airport remains open and Measure LC is not yet in effect, nothing prevents the City from building new development, subject to any existing development limits imposed by the FAA, the City’s general plan and zoning designation for Airport land, and the City’s leasing guidelines.

10. How does CEQA/EIR affect the alternatives we can or should study as related to Measure LC?

A. Is CEQA Analysis Required for Closure of the Airport?

No. Council Resolution No. 11026 was adopted on February 28, 2017, and “authorizes all actions necessary to ensure the closure of Santa Monica airport effective as of midnight on December 31, 2028” and states that City Staff “shall take all actions necessary and proper to ensure that the Airport will cease to operate as an airport and shall be closed to all aeronautical use forever effective as of midnight on December 31, 2028.”

Under CEQA, “approval” does not require formal approval. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116). “Approval” under CEQA occurs where “the agency has committed itself to the project as a whole or to any particular features, *so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered*, including the alternative of not going forward with the project.” (Id.) The Council’s actions clearly directed staff to take all actions necessary to “ensure that the Airport will cease to operate as an airport...effective as of midnight on December 31, 2028.” Therefore, the City’s actions in 2017 would likely be considered “approval” of the airport closure and would likely trigger a 180 day statute of limitations, which expired on August 28, 2017. (Pub. Res. Code § 21167(a); *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 44; *Cummings v. City of San Bernardino Redevelopment Agency* (2002) 101 Cal.App.4th 1229, 1234; *Simi Valley Recreation & Park District v. LAFCO* (1975) 51 Cal.App.3d 648, 666 [Rejecting argument that SOL did not begin to run until “decision was *implemented* by respondent...The cause of action clearly arose when the determination was [previously] made.].

The City will need to take additional subsequent implementing actions, including notification pursuant to 49 U.S.C. § 46319, 14 C.F.R. § 157.5(b)(2), and potentially notice under Pub. Res. Code § 21605. However, “[u]nder CEQA, ‘project’ ‘refers to the underlying activity which may be subject to approval by one or more governmental

agencies; *it does not refer to each of the several approvals sequentially issued by different agencies.*” (*Guerrero v. City of Los Angeles* (2024) 98 Cal.App.5th 1087, 1100). Therefore, the statute of limitations should start running from the 2017 approval, rather than the subsequent “implementing actions.” Consequently, the City may be able to rely upon the 2017 approvals to cover such subsequent actions.

B. Is CEQA analysis required before designing and building a park?

Yes, the decision to design and construct a park would be considered a “project” under CEQA because this activity may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is an activity directly undertaken by the City, which is a public agency. (Pub. Res. Code §21065(a)).

C. Council Identification of a Land Use Scenario for the “Proposed Project” and Alternatives in the CEQA Environmental Review Process.

To initiate the CEQA Review process, the City will need to select a “Proposed Project” and Alternatives for review in the Draft EIR.

D. Avoid Appearance of Informal Approval and Minimize Preferences for Specific Land Use Plans.

During this planning and feasibility process, the City, and most importantly its decision-makers (and any formal recommending bodies like the Planning Commission), should avoid any comments or suggestions indicating approval or support for any particular land use scheme. Any such statements are often used by opposition groups to assert (1) improper approval without CEQA review, and (2) improper bias.

E. Defining the CEQA Project Description (Reasonably Foreseeable Buildout).

Land Use Scheme Assumptions (total square footage). While Council will have selected a proposed land use scheme for analysis in the Draft EIR, City staff will need to translate those plans into a physical development proposal (i.e. reasonably foreseeable buildout of those plans). (CEQA Guidelines §§ 15378, 15146(b)). Some of this will require calculating the potential square footage of potential buildout. (*High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 121-22 [General Plan buildout based on historic growth patterns]; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1450 [EIR did not need to assume second dwelling units would be constructed, even though allowed by zoning]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 21 [analysis of development under proposed winery regulations based on questionnaire about likelihood of using regulations]; *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 287 [buildout of regulations based on landowner responses to survey]).

F. Is NEPA Analysis Required for Closure of the Airport?

Analysis under the National Environmental Protection Act (NEPA) is not required because no federal funds are involved in the Airport Conversion Project and the federal discretionary decision to close the Airport was authorized by the Consent Decree in 2017. Additionally, federal ministerial implementing actions to effectuate the discretionary decision to close the Airport are not subject to NEPA analysis.

11. How does the Surplus Land Act affect the disposition of Airport land post-closure?

The Surplus Land Act (Gov. Code, §§54220-54234)(SLA) aims to make local public land that is no longer needed for government purposes and entails a disposition of property (either long-term lease or sale) available for building affordable housing or open space. The SLA does this by requiring local agencies to provide notices about the availability of surplus property to the following entities:

- The California Department of Housing and Community Development (HCD).
- Any local public entity with jurisdiction over open space where the surplus local land is located.
- Developers who have notified HCD of their interest in developing affordable housing on surplus local public land.

Recent amendments to the SLA clarify that “disposition” of surplus property includes leases for a term longer than 15 years, inclusive of any extension or renewal options included in the terms of the initial lease, entered into on or after January 1, 2024. (Gov’t Code §54221(d)(1)(B)).

If the local agency receives notice of interest from an entity desiring to lease or purchase surplus land on terms that comply with the SLA, the local agency and entity are required to enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the local agency and entity cannot agree after a 90-day minimum good faith negotiation period, the local agency can dispose of the surplus land without further requirements; however, the documentation of good faith negotiations must be submitted to HCD for HCD’s confirmation that the local agency has complied with the SLA.

Importantly, under the SLA, residential use is deemed an acceptable use for the surplus land for purposes of good faith negotiations, and the agency is prohibited from disallowing residential use of the site as a condition of the disposition of surplus land. (Gov’t Code §54223). As a practical matter, this means that the City may not be able to limit residential use of the Airport land post-closure if it desires to sell or lease the land to a third party, regardless of the limitations imposed by Measure LC. If the City wanted to proceed with third party disposition of property post-Airport closure, it would be advisable for the City to consider whether housing should be considered as part of “the Project” for purposes of CEQA analysis as well as future voter approval.

12. What impact could the 7th Cycle Housing Element have on the Airport land post closure?

Barring legislative changes to state Housing Element laws, the City should anticipate adoption of the City’s 7th Cycle (2030-2038) Housing Element by October 15, 2029, (subject to any statutory extensions) unless amended by State law, based upon the Regional Housing Needs Assessment (RHNA) allocated to the City no later than one year before the due date. The RHNA allocation process starts with HCD’s determination of housing needs throughout the state, followed by RHNA allocations issued by the various Council of Governments (COGs). The COG for Santa Monica is the Southern California Association of Governments (SCAG). The COG develops the methodology and submits this methodology for HCD to review. After the methodology is adopted by SCAG, SCAG

develops a RHNA Plan, which must be adopted one year before the next housing element due date. As a practical matter, this means that the City will get a new RHNA allocation for housing likely before the Airport closes, which may alter the assumptions for development of the Airport land post-closure, particularly if the City is unable to demonstrate adequate suitable sites for housing development that accommodates the City's RHNA allocation for the 7th cycle, in the City's land areas outside the Airport land.

The State's Housing Element laws require that the Housing Element include an implementation program that demonstrates how the City plans to accommodate the RHNA allocation after the 7th Housing Element is certified by HCD. Any local land use restrictions, including Measure LC, that prevent housing will have no limiting impact if the City is unable to upzone as necessary Citywide to ensure that there are sufficient suitable sites to accommodate the City's next RHNA allocation or face decertification of whatever housing element is adopted, even if the City obtains certification. Failure to upzone could subject the City to all legal remedies under State Housing Laws, including monetary penalties, third-party lawsuits, and the Builder's Remedy, citywide. Therefore, in addition to SLA conflicts, it would be advisable for the City to consider realistic assumptions for development of new housing for the 7th Cycle as part of the CEQA analysis for the post-closure uses of the Airport.

- 13. Can you please provide a flowchart to show the decision process for when Measure LC applies?**

[FLOW CHART ON NEXT PAGE]

