



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 4, 2017

ITEM NUMBER: PH-2

**SUBJECT: RETROACTIVE EXTENSION OF TIME FOR PLANNING APPLICATION PA-11-03 –
CONDITIONAL USE PERMIT FOR A PRIVATE HELISTOP FOR 3132 AIRWAY AVENUE**

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MEL LEE, SENIOR PLANNER

DATE: MARCH 23, 2017

**FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP (714) 754-5611
mel.lee@costamesaca.gov**

RECOMMENDATION

Staff is recommending that the City Council approve a retroactive time extension by adoption of City Council resolution, subject to conditions of approval, for the use as described below:

- Conditional Use Permit PA-11-03 is a request 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 approved in 2011 by the Airport Land Use Commission (ALUC) and the Federal Aviation Administration (FAA). The project was considered by the Planning Commission on September 28, 2015, and it recommended approval of the project to the City Council, which approved the project on November 3, 2015. If approved, the time extension would be valid until November 3, 2017.

APPLICANT/AUTHORIZED AGENT

The applicant/authorized agent is Kevin A. Coleman, c/o Net Development Company, who is also the property owner.

BACKGROUND/ANALYSIS

Project Site/Environs

The property is located on the east side of Airway Avenue, between Baker Street and Fischer Avenue. The property is zoned MP (Industrial Park), approximately 2.4 acres in size, and contains an existing one-story, 37,955 square foot industrial building. The subject property abuts John Wayne Airport (JWA) to the east. On April 1, 2011, the City issued building permits for a tenant improvement for Leading Edge Aviation Services. Leading Edge Aviation Services paints civilian and military aircraft at facilities around the world; however, no painting of aircraft is proposed at this location - this location is for storage of materials and offices only. The tenant improvement included a second story, 980 square foot addition for the CEO's office at the northeast end of the building (see site photos Attachment 2). This tenant improvement was finalized in October 2011.

The second phase of the tenant improvement was to be the construction of the helistop on the southeast end of the existing building for the CEO's private helicopter. Per Zoning Code Section 13-30(82), heliports and helistops require the approval of a conditional use permit.

What is a helistop?

A helistop is a landing place for helicopters, often on the roof of a building or some other limited access area. There are a number of different terms to describe similar facilities, including "heliport" and "helipad." The applicant's supporting documents, which are attached to the November 3, 2015 City Council staff report, explains that the facility will be specifically used for limited takeoffs/landings, rather than housing other related activities such as maintenance, refueling, and storage, which is normally associated with a heliport; additionally, the facility is for private use and not open to the general public. For clarity, the term "helistop" is used to describe the proposed facility in this report.

Other Regulatory Agencies

Because of the proximity of the helistop to John Wayne Airport (JWA), 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 provisions:

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.

A detailed description of the proposed facility was submitted to ALUC and their determination that the facility was compatible with the AELUP was made on July 21, 2011, and is attached to the November 3, 2015 City Council staff report. According to the ALUC, their 2011 approval of the proposed facility remains valid.

City Council as the Final Review Authority

Typically, the Planning Commission is the final review authority for CUPs unless the Commission's action is appealed or called up for review by the City Council. However, Public Utilities Code Section 21661.5(b), underlined below, stipulates that final approval of the helistop is by the City Council, unless said approval is specifically delegated by the Council to the Commission. The specific PUC provision is summarized below:

21661.5. (a) No political subdivision, any of its officers or employees, or any person may submit any application for the construction of a new airport to any local, regional, state, or federal agency unless the plan for construction is first approved by the board of supervisors of the county, or the city council of the city, in which the airport is to be located and unless the plan is submitted to the appropriate commission exercising powers pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9, and acted upon by that commission in accordance with the provisions of that article.

(b) A county board of supervisors or a city council may, pursuant to Section 65100 of the Government Code, delegate its responsibility under this section for the approval of a plan for construction of new helicopter landing and takeoff areas, to the county or city planning agency.

Because the City Council does not have a formal policy delegating the approval of heliports or helistops to the Planning Commission, it was necessary that the City Council take final action on the CUP.

Project History

On August 8, 2011, Planning Commission considered the original request for the helistop. One member of the public spoke in opposition to the request during the hearing. The Commission recommended denial of the project to the City Council on a 3-1 vote (Commissioner Fitzpatrick voting no, Commissioner Salcedo absent). The basis for the denial is discussed in greater detail in the attached staff report. The project was scheduled for the November 1, 2011 City Council hearing. The applicant requested several continuances before withdrawing the item from the City Council agenda on June 19, 2012. No City Council action was taken on the original 2011 application.

In 2015, the applicant requested a new hearing for the project. Because of the amount of time that had elapsed between the time the project was last considered at a public hearing, the request returned to the Planning Commission at their September 28, 2015 meeting for recommendation to the City Council.

Summary of September 28, 2015 Planning Commission Action

The Planning Commission held a public hearing on September 28, 2015, which included presentation of the staff report. In addition, public comments both in favor of and opposed to the request were received by the Planning Commission. Based on the evidence and testimony presented during the hearing, the Planning Commission voted to recommend approval of the conditional use permit to the City Council by a 5-0 vote based on the following:

- The applicant's noise study, which was not presented to the Planning Commission in 2011, concluded that there would be no significant noise impacts to surrounding properties as a result of the helistop operations. After the August 8, 2011 Planning Commission meeting, the applicant prepared a noise study for the City Council's consideration, which was withdrawn prior to the public hearing.

The noise study, prepared by Acoustics Group Inc., concluded that there would be no increase in noise impacts to surrounding uses (including noise-sensitive uses such as the nearby Mariner's Christian School) because the subject site is within the 65 decibel (dB) Community Noise Equivalent Level (CNEL) noise contour of JWA, and that the helistop noise would be below this City, County, and FAA noise standard for sensitive receptors. At Mariner's Christian School, the existing CNEL from JWA is 62 dB. Future helistop operations would produce a CNEL of 46.1 dB at the school, approximately 16 dB below existing airport noise levels. The noise study was updated by the consultant and presented at the September 28, 2015 meeting, and incorporated as a condition of approval.

- The use of the helistop is for a private helicopter only – the facility will not be open to the general public, i.e., a heliport, and will be limited to a specific number of flights per day and per week and hours of operation. According to the applicant, the use of the facility will vary depending upon the business owner's travel needs. 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. This is reflected in the conditions of approval.
- No fueling, maintenance, or repair facilities are proposed. According to the applicant, the facility will be used for arrivals and departures of the helicopter only. No fueling or maintenance activities will occur on the site.

Summary of November 3, 2015 City Council Action

The City Council held a public hearing on November 3, 2015, which included presentation of the staff report. During the hearing, one person spoke under Public Comments in opposition to the request. Based on the evidence and testimony presented during the hearing, the City voted to recommend approval of the conditional use permit to the City Council by a 3-2 vote (Council Member Genis and Council Member Foley voting no).

Request for Retroactive Time Extension

Per CMMC Section 13-29(k), project approvals are typically valid for one year unless construction commences during that time. Since the project's approval by City Council, the applicant states that he has been working toward obtaining the required approvals from Cal Trans Aviation and the OC Airport Tower, as well as approval of the plans from the Building Safety Division, which are currently in plan check. Because these approvals took longer than the applicant anticipated, building permits were not able to be issued prior to the one-year expiration of the City Council's approval on November 3, 2016. The City concluded that a time extension request was needed for the project to move forward.

As noted earlier, the one-year time limitation for project approvals is specified in the CMMC. Processing complicated applications, especially when they require approval from multiple jurisdictions or agencies, can take more than one year, thus requiring applicants to return to the City to file an additional application for a time extension. Most recently, the Ganahl Lumber project on Bristol Street required a time extension in order for the applicant to satisfy all the necessary steps before permits could be issued. Moreover, in reviewing this case, staff observed that the existing one-year time frame for project approvals is relatively short when compared to other cities. The City Council could provide direction to staff should it want further analysis of the issue - together with some options for possible changes to the Municipal Code. Also, though the City Council recently denied a time extension request for a residential project, that project's approval was valid for two years while this project's approval was valid for one year (approvals for residential projects with a subdivision map are valid for two years).

ENVIRONMENTAL DETERMINATION

The project was reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and was found to be exempt from CEQA under Section 15311, Class 11, Accessory Structures. If the project is denied, it is exempt from the provisions of CEQA Section 15270(a) for Projects Which Are Disapproved.

LEGAL REVIEW

The City Attorney has reviewed the resolutions and they have been approved as to form by the City Attorney's Office.

PUBLIC NOTICE

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. *Mailed notice.* A public notice was mailed to all property owners within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property. (See attached Notification Radius Map.)

2. *On-site posting.* A public notice was posted on the street frontage of the project site.
3. *Newspaper publication.* A public notice was published once in the Daily Pilot newspaper.

ALTERNATIVES

The City Council may take the following actions:

1. Approve the retroactive time extension as proposed by the applicant; or
2. Deny the time extension.

CONCLUSION

Staff is recommending that the City Council approve the retroactive time extension for the conditional use permit approval for the helistop facility.



MEL LEE, AICP
Senior Planner



JAY TREVINO, AICP
Development Services Department Consultant

Attachments:

1. [Location Map and Radius Map](#)
2. [Site Photos](#)
3. [Project Description and Time Extension Request](#)
4. [Draft Resolutions](#)
5. [November 3, 2015 City Council Staff Report and Attachments](#)