



THE CITY OF SAN DIEGO

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SAN DIEGO
COUNTY GRAND JURY

Honorable John S. Einhorn
Presiding Judge, San Diego County Superior Court
220 West Broadway, Department SD-P
San Diego, CA 92101

Dear Judge Einhorn:

Subject: Response to San Diego County Grand Jury 2004-2005 Report

In compliance with California Penal Code §933.05, the City of San Diego has extensively reviewed the April 21, 2005 report from the San Diego County Grand Jury entitled "Naval Training Center (NTC) San Diego A Gift to the Citizens of San Diego." Consistent with the requirements and instructions of California Penal Code §933.05, responses are enclosed for all findings and recommendations.

The City values the efforts of the Grand Jury in researching land use decisions associated with the reuse and redevelopment of the NTC site. We acknowledge that the report does not find any illegal action on behalf of the City. We do, however, disagree with a number of the findings, recommendations, and entries in the "Discussion" section of the report. Those differences are noted in the City's responses. We believe the reuse decisions at NTC have been made in accordance with federal, state, and local law and with full public participation and have resulted in appropriate reuse decisions.

Please contact me if you have any questions or require additional information.

Sincerely,



P. Lamont Ewell
City Manager

cc: William L. Westlake, Foreman, 2004-2005 San Diego County Grand Jury



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Honorable John S. Einhorn
July 5, 2005

PLE/EO/cw

Enclosure

cc: Honorable Mayor and City Council
Ellen Oppenheim, Deputy City Manager
Gary Halbert, Director, Development Services Department
Maureen Ostrye, Acting Deputy Director, Community & Economic Development
Betsy McCullough, Deputy Planning Director
Keith Greer, Deputy Planning Director
Kelly Broughton, Deputy Director, Development Services
Chris Zirkle, Assistant Deputy Director, Development Services
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FINDINGS OF THE SAN DIEGO COUNTY GRAND JURY

In accordance with Government Code §933.05, the City of San Diego is required to address the **findings** of the Grand Jury report as follows:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Each of the nine findings of the report (identified below as A through I), are therefore reprinted below followed by the required response.

A. *The general public did not play an active role in the planning process.*

The City of San Diego disagrees wholly with this finding. The City of San Diego assumes that the referenced “planning process” refers to the entire reuse and redevelopment of the NTC site. The announcement of impending closure of NTC in 1993 triggered an aggressive public planning process.

The Grand Jury report states the following facts:

- The Mayor established the NTC Reuse Committee, a 26-member citizens committee whose members were to work with City and Navy staff, consultants and the public to formulate recommendations to the City Council on the reuse of the site.
- The general public was provided opportunities to communicate concerns during meetings of the NTC Reuse Committee, meetings of the subcommittees, and by responding to draft environmental documents.
- Also communicating their concerns were City-wide and regional single-focus organizations.

However, the following events that occurred during the NTC Redevelopment Project (1993 – 2000) were not recognized by the Grand Jury report.

- Quarterly newsletters were distributed to a mailing list exceeding 16,000 persons
 - Regular press releases were issued
 - Community tours were provided
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- Monthly e-mail updates were distributed
- Web page coverage provided
- Speakers Bureau – redevelopment plans presented to over 14 dozen organizations
- Regular attendance at Peninsula Community Planning Board, Citizens Implementation Advisory Committee (CIAC), North Bay Project Area Committee, Midway Community Planning Advisory Committee, and Peninsula Chamber of Commerce

The announcement of impending closure of NTC in 1993 triggered an aggressive public planning process. A 27-member NTC Reuse Committee was formed by then-Mayor Susan Golding to provide policy direction to the City Council/Redevelopment Agency and create a forum for public input. The Reuse Committee established six subcommittees to address economic development, environmental issues, park and recreation opportunities, homeless assistance, education, and interim use of the base. Interested citizens were welcome to participate on the subcommittees. The Reuse Committee met monthly for more than two years, and each subcommittee held public meetings during that time. Several all-day design workshops were also held to educate citizens about the base closure process and to hear reuse ideas. A local consulting team, led by Rick Engineering, was hired early in the process to assess the existing conditions and facilitate the development of the reuse plan.

Throughout the NTC Redevelopment Project from 1993 through 2000, the general public was afforded opportunity for involvement through over 200 public meetings and forums. Those with an interest became involved. The finding that the general public did not play an active role in the planning process is clearly not supported by the facts.

B. *The San Diego City Council's actions adopting the NTC Reuse Plan and certifying the FEIR foreclosed any opportunity to consider other alternatives for the NTC Site.*

The City of San Diego disagrees wholly with this finding. Through the public process, multiple options were considered for reuse of the site. The decision-making process under the California Environmental Quality Act (CEQA) requires agencies “to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment” (Public Resources Code, Division 13, Chapter 1, 21001(g)). This process was fulfilled through adoption of the Reuse Plan and Final Environmental Impact Report. Nothing in CEQA precludes an agency from preparing subsequent CEQA documentation and making subsequent decisions. Rather, CEQA

specifically states at 21174, "No provision of this division is a limitation or restriction on the power or authority of any public agency. . . ." The City of San Diego acted in accordance with the law to develop, define, and determine a specific course of action for reuse of the NTC site considering alternatives as required by CEQA. Further, it is noted that no litigation was filed against the CEQA documents.

C. *The Statement of Overriding Considerations is a justification for development.*

The City of San Diego agrees with this finding. As required by CEQA at 15093, the Statement of Overriding Considerations explains the specific reasons for the action considering economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks.

D. *The City Council's desire to develop the NTC site has resulted in the City allowing new uses on the site which do not comply with acceptable land use / noise compatibility guidelines.*

The City of San Diego disagrees wholly with this finding. The facts as presented by the Grand Jury are not complete. The Grand Jury failed to reference the Comprehensive Land Use Plan (CLUP) for Lindbergh Field¹ which specifically states in Table 1 on page 10 that an incompatible land use within the noise impact boundary (65 CNEL) includes:

PUBLIC OR PRIVATE SCHOOLS of standard construction for which an avigation easement for noise has not been acquired by the airport proprietor, or that do not have adequate acoustic performance to ensure an interior CNEL of 45 dB or less in all classrooms due to aircraft noise [emphasis added].

The Grand Jury report further failed to disclose the fact that the Caltrans Handbook² and the California Code of Regulations,³ both of which were selectively cited, further agree that the avigation easement fulfills the required mitigation. If the Grand Jury considered all available facts, it should have concluded that the actions comply with land use and noise compatibility guidelines because an avigation easement was granted and because interior noise mitigation was required.

1 *Comprehensive Land use Plan, Lindbergh Field, San Diego*. February 1992, Amended April 1994, San Diego Association of Governments.

2 <http://www.dot.ca.gov/hq/planning/aeronaut/htmlfile/landuse.php>

3 California Division of Aeronautics, Noise Standards, Title 21, Division 2.5, Chapter 6, Article 1, Section 5014

The Grand Jury report failed to recognize previous written direction from the Port of San Diego (Thella Bowens, September 8, 2000) in response to the NTC Precise Plan Mitigated Negative Declaration which specifically recognizes that the required avigation easement “was found to be sufficient to reduce potential aircraft noise impacts to less than significant levels.” A copy of this letter is attached for reference.

- E. *The decision to identify noise impacts as a plan inconsistency issue rather than a health issue made it easier for the public and decision makers to overlook the fact that the plan and implementing projects would cause harm to NTC residents and school children subjected to those noise impacts.***

The City of San Diego disagrees wholly with this finding. The CEQA analysis for The Rock specifically discloses the health effects of noise on pages 14 and 15 of the EIR Addendum. If the Grand Jury considered all available facts, it should have concluded that the actions comply with land use and noise compatibility guidelines because an avigation easement was granted and because interior noise mitigation was required. For example:

- The report fails to recognize safe noise levels as defined by the U.S. Environmental Protection Agency (EPA), which seek to provide guidance on safe noise levels for “the vast majority of the population,” but, rather, makes its recommendations from the National Institute for Occupational Safety and Health (NIOSH) occupational noise standards, which seek to protect a worker assuming a 40-year lifetime exposure. While the EPA document is cited as a reference, it is not discussed in the body of the report as a point for discussion and comparison. The report only chooses to use the occupational noise standard as the sole basis for its findings. The Grand Jury report is selective in the data reported and does not present a comprehensive evaluation.
- The Grand Jury report should have recognized the difference in regulatory definitions of safe noise levels. For example, the report does not recognize other safe noise levels such as those established by the EPA and the Permissible Noise Exposure Limits of the Occupational Safety and Health Administration (OSHA). For example, OSHA says a permissible noise exposure limit for 8 hours at 90 dB (Table G-16, 1910.95(b)(2)), whereas the NIOSH example cited by the report says an acceptable safe level is about 3 hours at 90 dB. EPA finds 45 dB interior safe and no more than 8 hours at 75 dB safe. EPA finds that a typical “school child” is exposed to 80 dB on the playground. EPA finds that a 24 hour average exposure of 70 dB for intermittent noise is safe.

- The report fails to recognize that activities of children attending The Rock Academy would be conducted in an enclosed indoor gym. The report makes the assumption that all play activities would be conducted outside.
- The report states that the environmental documents did not identify noise as a health issue. The EIR Addendum for The Rock disclosed the health effect and other effects (such as learning impairment) of noise (see pages 14 - 15 of the EIR Addendum for The Rock).

F. *Children attending schools in the Educational Use area are exposed to single noise events at harmful levels when they are in their school's outdoor areas.*

The City of San Diego disagrees wholly with this finding. As determined by the U.S. Environmental Protection Agency, noise exposures at Leq(8 hour) of 75 dB is considered appropriate to protect against hearing loss, so long as the exposure over the remaining 16 hours is low enough to result in a negligible contribution to the 24-hour average. A person's 24-hour noise exposure at the ear should not exceed 70 dB.

The facts cited in Part IV of the Grand Jury report lead the reader to believe that under normal conditions, more than 200 flights per day take off over the Educational Use area at a maximum exposure of 110 dB. This is misleading. Based on the location of Building 94 between Remote Monitoring Stations (RMS) 7 and 20, it is reasonable to assume Single Event Level (SEL) fluctuations between 79 and 110 dB. Figures 12, 14, and 16 of the EIR Addendum show that only about 10 events per hour were experienced on the heaviest airport operation days in 2003 with an average intensity of about 90 dB SEL. Therefore, assuming that a student could be outside for about an hour exposed to 90 dB SEL and 8 hours inside exposed to 45 dB CNEL, equates to an average of 50 dB per day noise exposure. EPA defines a safe exposure at 75 dB over eight hours. The daytime exposure for the student is therefore considered within safe acceptable levels.

G. *A large number of young children would attend the school and use the outdoor areas.*

The City of San Diego partially disagrees with this finding. The primary recreational area was disclosed as the indoor gymnasium. The City did not regulate use of the outdoor areas. The City limited enrollment of the school to 2,000 K-12 students per year.

H. *Children attending the Rock Academy will be exposed to single noise events at harmful levels when they are in their school's outdoor areas.*

The City of San Diego disagrees wholly with this finding. As determined by the U.S. Environmental Protection Agency, noise exposures at Leq(8 hour) of 75 dB is considered appropriate to protect against hearing loss, so long as the exposure over the remaining 16 hours is low enough to result in a negligible contribution to the 24-hour average. A person's 24-hour noise exposure at the ear should not exceed 70 dB. Based on the Airport Authority data disclosed in the environmental analysis for The Rock, assuming that a student could be outside for about an hour exposed to an average of 90 dB SEL and 8 hours inside exposed to 45 dB CNEL, equates to an average of 50 dB per day noise exposure. EPA defines a safe exposure at 75 dB over eight hours. The daytime exposure for the student is therefore considered within safe acceptable levels.

I. *Children attending Explorer Elementary Charter School and High Tech High Communities Middle School will be exposed to single noise events at harmful levels when they are in their school's outdoor areas.*

The City of San Diego disagrees wholly with this finding. As determined by the U.S. Environmental Protection Agency, noise exposures at Leq(8 hour) of 75 dB is considered appropriate to protect against hearing loss, so long as the exposure over the remaining 16 hours is low enough to result in a negligible contribution to the 24-hour average. A person's 24-hour noise exposure at the ear should not exceed 70 dB. Based on the Airport Authority data disclosed in the environmental analysis for The Rock, assuming that a student could be outside for about an hour exposed to an average of 90 dB SEL and 8 hours inside exposed to 45 dB CNEL, equates to an average of 50 dB per day noise exposure. EPA defines a safe exposure at 75 dB over eight hours. The daytime exposure for the student is therefore considered within safe acceptable levels.

RECOMMENDATIONS OF THE SAN DIEGO COUNTY GRAND JURY

In accordance with Government Code §933.05, the City of San Diego is required to address the **recommendations** of the Grand Jury report as follows:

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Each of the two recommendations of the report are therefore reprinted below followed by the required response.

The Grand Jury recommends the San Diego City Council:

05-01: Not allow new residential and school uses in noise impact areas.

The recommendation will not be implemented as stated because it is not reasonable, it not defined, and is not legally defensible. "Noise impact areas" is not a defined term and therefore not possible to clearly implement. Future land use planning will be guided by the outcome of the Airport Land Use Compatibility Plans (ALUCPs), currently under development by the San Diego County Airport Authority, and by the City of San Diego Progress Guide and General Plan, currently under revision by the City of San Diego Planning Department. State law discourages, but clearly allows incompatible uses such as new residential and educational uses in noise sensitive areas if mitigation in the form of an aviation easement is obtained.

Allowing residential uses in areas that exceed the 65 dB CNEL is consistent with the adopted 2004 ALUCP and supported by proposed 2005 ALUCP Appendix C, the California Department of Transportation Division of Aeronautics *Airport Land Use Planning Handbook*, California Code of Regulations Title 21, Section 5014, the Governor's Office of Planning and Research *California General Plan Guidelines*, and US Code of Federal Regulations - Title 14 Part 150 Appendix A, which all condition allow these uses above the 65 dB CNEL with sound attenuation measures ensure an interior CNEL of 45 dB or less. The City of San Diego is currently working with the Airport Authority to define appropriate land use restrictions around the county airports. Comments were provided to the Airport Authority on April 15, 2005. Following adoption of the ALUCP, changes will be incorporated into the General Plan and community plans as appropriate.

The Grand Jury recommends the San Diego City Council:

05-02: *Give serious consideration to adverse health impacts when evaluating development and use proposals.*

The recommendation has been implemented. The existing City of San Diego CEQA Checklist requires consideration of human health impacts under categories of Air Quality, Geology, Human Health/Public Safety/Hazardous Materials, Hydrology/Water Quality, Land Use (accident potential), Noise (in terms of the levels established by ordinance and plan), Traffic (hazard), and in the Mandatory Findings of Significance.