

DATE: April 17, 2001
TO: Robert R. Ovrom, City Manager
FROM: Susan M. Georgino, Community Development Director
SUBJECT: ROAR Initiative Report

I. INTRODUCTION

Staff has prepared this report in accordance with California Elections Code Section 9212 pursuant to a request by the Burbank City Council on March 20, 2001. The purpose of this report is to identify the potential fiscal and other effects on the City of Burbank (“City”) of the Initiative submitted by the Committee to Restore Our Airport Rights (“ROAR Initiative”). The Community Development Department prepared this report in consultation with other departments of the City having relevant information on the potential effects of the ROAR Initiative and primary responsibility for matters addressed herein.

II. SUMMARY OF FINDINGS

The ROAR Initiative requires the City to (1) hold an election prior to final approval of the financing or construction of an airport terminal and grant final approval only if the measure receives a 2/3 affirmative vote; (2) refrain from consenting to the acquisition or rezoning of any land for Airport use or the financing or construction of any new, rebuilt, relocated, or expanded Airport facility unless and until the Airport has satisfied twelve conditions; and (3) vigorously enforce the provisions of the ROAR Initiative and the Joint Powers Agreement and provide independent noise monitoring of aircraft activity in the City.

Staff evaluated and describes in this report four principal effects of the ROAR Initiative: (1) the costs and other effects associated with City review of requests for acquisition, rezoning, financing, or construction; (2) the costs and other effects of City enforcement of the ROAR Initiative; (3) the potential effects of the restrictions that must be implemented prior to City consent; and (4) the relationship between the ROAR Initiative and existing City ordinances.

Staff’s findings with regard to each of these issues are summarized below.

Costs and Effects Prior to Granting Consent. The Initiative would require the City to hold one or more elections that, if not consolidated with other measures, would require considerable expense and effort by the City. More significantly, the City’s responsibility under the ROAR Initiative to verify the Airport’s satisfaction of the twelve conditions may require the commitment of existing

Staff resources, the hiring of additional City Staff, and the retention of outside consultants. Staff and its consultants would be obligated to, for example, verify the implementation of the curfews, caps and ban on non-Stage 3 aircraft; review and perhaps approve the sound insulation program, environmental impact reports, and master plans; and prepare studies on the Authority's share of infrastructure improvement costs and Payments In Lieu of Taxes (PILOTs). Depending upon the interpretation of various aspects of the Initiative and the resulting scope of the conditions, the costs associated with verifying the conditions may amount to several hundred thousand dollars per year.

Aside from the costs associated with verifying the conditions, an extensive amount of time is anticipated for all of the conditions to be satisfied. Staff finds that the required curfew, aircraft operations and passenger caps, and ban on non-Stage 3 aircraft would require FAA approval that may require several years to obtain. Depending upon the interpretation of the Initiative and the degree of environmental assessment required, an EIR described in the ROAR Initiative may take up to two years to complete. Similarly, an Airport Master Plan may require a year or more to complete. The time impacts of the ROAR Initiative also may have the effect of making it extremely unlikely that the B-6 Property would be used within the next few years, if ever, for purposes of constructing a new passenger terminal.

Costs and Effects After Granting Consent. The ROAR Initiative may be interpreted to require ongoing monitoring by the City of certain Airport activities. This may include investigation of complaints, noise monitoring and investigation of non-Stage 3 aircraft operations, investigation of curfew violations, monitoring of the sound insulation program, and monitoring of PILOTs and infrastructure payments. Again, such activities may require the commitment of existing Staff resources, hiring additional Staff, and retaining various consultants with appropriate expertise. In particular, the installation of a comprehensive noise monitoring system is predicted to cost over \$1,000,000, and management of the system may cost \$50,000 annually. Staff and outside consultants also would have to spend considerable time and money determining whether the curfew, caps, and other restrictions identified in the ROAR Initiative had been violated.

The fines associated with violation of the ROAR Initiative have the potential to provide new sources of revenue for the City; however, Staff cannot predict the potential revenue because (1) the penalty provision refers to violations of the Initiative, which, by its terms, only restricts actions by the City, and (2) if interpreted to require fines in the event of noncompliance with the curfew and other restrictions, the particular level of noncompliance with such restrictions is difficult to gauge.

Effects of Restrictions Required to be Imposed by the Airport. Staff believes that the principal effect on the City of the restrictions imposed by the ROAR Initiative would be lost tax revenue. The City currently receives the following taxes from the Airport and Airport users: personal property and unsecured property taxes paid principally on aircraft based or operating at the Airport; parking taxes equal to ten percent (10%) of the gross receipts for Airport and Airport-related parking lots; sales taxes from car rentals, jet fuel sales, and sales by concessioners; and possessory interest taxes from leasehold interests on Airport properties by Airport users.

Any or all of the use restrictions identified in the ROAR Initiative, the curfew, caps, and ban on all non-Stage 3 aircraft, may have the effect of reducing tax revenue to the City. In particular, if the caps necessitate that the Airport be closed during any period or the ban on non-Stage 3 aircraft requires that substantial numbers of aircraft are prohibited from using the Airport (e.g., propeller-driven aircraft), then the amount of lost tax revenue would be substantial.

The conditions identified in the ROAR Initiative would have the effect of generating revenue for the City in the form of payments in lieu of taxes and infrastructure and maintenance payments.

In addition to these fiscal impacts, Staff believes that the conditions may have a substantial effect on the community such as by reducing the noise burden imposed by the Airport and aircraft and forcing changes in operations and perhaps relocation by Airport users. Staff has not, however, attempted to evaluate or quantify comprehensively such potential costs and effects.

Effects on City Ordinances and Plans. Although the ROAR Initiative does not identify or attach sections of the Burbank Municipal Code that would be amended, Staff believes that the Initiative may be interpreted to amend several sections of the General Plan and the Code, including the Zoning Code, Building Code, and Elections Code.

III. BACKGROUND

A. Procedural History

On August 11, 2000, Howard Rothenbach, on behalf of the Committee to Restore Our Airport Rights, submitted to the City Clerk a Notice of Intent to Circulate Petition, as required by California Elections Code Section 9201. The City Attorney prepared subsequently a title and summary of the proposed measure in accordance with California Elections Code Section 9203. After circulating the petition and on January 30, 2001, ROAR submitted a petition to the City Clerk that included approximately 10,700 signatures. On March 20, 2001, the City Clerk certified that the petition included the number of qualified signatures necessary to require the City Council to act on the petition pursuant to California Elections Code Section 9214.

On March 20, 2001, the City Council directed Staff pursuant to California Elections Code Section 9214(c) to prepare a report on the potential effects of the Initiative in accordance with Section 9212. Section 9212 provides as follows:

(a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the legislative body requests to be in the report.

This report is being presented within thirty (30) days from the date that the City Clerk certified the petition as required by California Elections Code Section 9212(b). Pursuant to Section 9214, the Council must either adopt the measure as an ordinance within 10 days of the presentation of this report or order immediately a special election at which the proposed measure will be submitted to the voters.

B. Summary of Initiative

The text of the Initiative is attached as Exhibit A. As stated by the City Attorney in the summary of the proposed measure, the Initiative purports to impose certain requirements on the City concerning matters relating to any airport located in whole or in part within the City.

The ROAR Initiative imposes three principal requirements upon the City. First, the City shall hold an election prior to "final approval of the financing and/or construction of an airport terminal." To grant final approval, the action must be authorized by a two-thirds vote.

Second, the City shall not consent to any of the following before the Airport has complied with certain conditions:

1. Acquisition of any land for Airport use.
2. Rezoning of any land for Airport use.
3. Financing of any new, rebuilt, relocated or expanded Airport facility.
4. Construction of any new rebuilt, relocated or expanded Airport facility.

The conditions include the following:

1. A curfew on all aircraft operations and engine run-ups between the hours of 10:00 p.m. and 7:00 a.m.
2. A limit on the maximum number of annual aircraft operations no more than 10% above the number of aircraft operations in 2000.
3. A limit on the maximum number of annual aircraft passengers no more than 10% above the number of aircraft passengers in 2000.
4. Rules to enforce the curfew and caps through fines and sanctions, including but not limited to prohibiting Airport use.

5. A ban on all operations by “all aircraft not originally manufactured and certified as meeting FAR Part 36 Stage 3 noise limits”.
6. A program for sound insulation, including providing matching funds.
7. The Airport shall not impose an aviation easement as a condition for sound insulation.
8. Preparation of an Environmental Impact Report.
9. Preparation of an airport Master Plan.
10. The Airport shall not lengthen or add runways or modify runways to accommodate heavier or larger aircraft.
11. A legal means to pay the City a fine of \$5,000 for each day of each violation.
12. The Authority shall reimburse the City for lost property tax revenues and the Airport’s share of infrastructure improvements and maintenance.

Third and finally, the ROAR Initiative requires the City to vigorously enforce its provisions and the Joint Powers Agreement and to provide independent monitoring of aircraft activity in the City.

IV. SCOPE OF THIS REPORT

In ordering this report, the City Council did not specify which items enumerated in Section 9212(a) were to be evaluated. Staff accordingly has evaluated each of the applicable enumerated items along with all other potential effects of the ROAR Initiative on the City, as could be addressed within the limited time allotted by the Elections Code.¹

Staff has evaluated four principal elements of the ROAR Initiative. First, Staff has considered the costs and other effects associated with City review of the requests for consent concerning acquisition, rezoning, financing and construction. See Section V. Second, Staff has considered the costs and other effects of City enforcement of the ROAR Initiative. See Section VI. Third, Staff has identified the potential effects of the restrictions that must be implemented prior to City consent. See Section VII. Fourth, Staff has considered the relationship between the ROAR Initiative and existing City ordinances. See Section VIII.

In preparing this report, Staff has endeavored to follow the precise language of the petition. In attempting to identify, describe, and quantify the potential effects of the ROAR Initiative, Staff has determined that certain words and phrases of the ROAR Initiative may be subject to multiple interpretations. Where Staff has identified vague or ambiguous words and phrases, Staff has attempted to identify and articulate in this report the range of potential costs and other effects reflecting reasonable interpretations of the applicable language.

Staff has not evaluated the potential costs and other effects associated with the projects that are the subject of the ROAR Initiative (e.g., new terminal). In January 2001, the Authority withdrew several applications pending before the City concerning construction of a new terminal on property located proximate to the Airport (“B-6 Property”). In February 2001, the Authority tasked an environmental consultant with preparing an environmental impact report on the potential construction of a new terminal on property owned currently by the Authority. The

¹ Since the proposed measure, as described below, does not purport to control or affect residential property of any kind, this report does not address any potential impacts concerning housing identified in Section 9212(a).

Authority also has submitted for City review and approval several applications concerning the acquisition and use of property (including portions of the B-6 Property) for use in enhancing a runway safety area. Although Staff believes that the new terminal and runway safety area projects may be subject to the requirements of the ROAR Initiative, Staff does not believe that the review of the potential costs and effects of these projects or any other airport development projects should be evaluated as part of this report. Such costs and effects are not related directly to the ROAR Initiative and, in particular, the actions required of the City under the Initiative.

Staff has not included in this report any analysis of the legal sufficiency of the ROAR Initiative. The City Attorney is obligated to prepare an impartial analysis of the ROAR Initiative. This report assumes for purposes of analysis that the ROAR Initiative is valid and enforceable, and only discusses the potential effects of the Initiative on the City. The City Attorney is preparing a separate memorandum on implementation issues associated with the ROAR Initiative.

Staff similarly has not evaluated the potential costs and other effects associated with any legal challenge to the ROAR Initiative. Staff recognizes that such challenges may arise in the future and that the City may be obligated to defend its actions concerning the petition and/or the substantive elements of the ROAR Initiative. Staff has not evaluated the costs of potential litigation, however, because Staff has no means to predict effectively whether litigation will ensue and the nature and scope of any such litigation.

V. EFFECTS PRIOR TO GRANTING CONSENT

A. Requirement to Hold Election

One effect of the ROAR Initiative on the City relates to its requirements of voter approval. If the City Council does not adopt the ROAR Initiative as an ordinance, it must be submitted to the electorate. In addition, the ROAR Initiative requires the City to obtain the consent of the electorate prior to approving the financing or construction of an airport terminal. Both of these scenarios require an election to be held to submit an item to the voters. If the election is held in conjunction with a regular election or a special election with multiple ballot measures, the anticipated incremental cost to the City to include the ROAR Initiative or a vote on the financing or construction for a terminal is estimated to be \$5,000 to \$7,000. This would cover the cost of printing additional voter pamphlet pages for the text of the item being voted on, arguments in favor of and against the item, and the impartial analysis prepared by the City Attorney. Because of the Staff time already devoted to the election, the additional Staff time required specifically as a result of the ROAR Initiative would be minimal. However, if any voter action required by the ROAR Initiative necessitates the calling of a special election at which the ROAR Initiative or a project subject to the Initiative is the only measure to be voted upon, the cost to the City would be approximately \$80,000 to \$85,000. This cost includes ballot printing, mailing, wages for poll workers, and payments for polling sites. This cost does not reflect the amount of Staff time that would be devoted to preparing and administering a special election, which would impose a burden on the City Clerk's office.

B. City Review of Airport's Satisfaction of the Twelve Conditions

The ROAR Initiative requires the City to verify compliance by the Airport with twelve specific conditions prior to consenting to the acquisition or rezoning of any land for Airport use, or the financing or construction of a new, rebuilt, relocated or expanded Airport facility. The responsibility of ensuring that each of the twelve conditions is satisfied prior to taking any action on a request for consent will create significant burdens on existing Staff resources. The City would likely be required to hire additional Staff and contract with consultants to handle the processing of requests for consent as well as monitoring Airport activities to ensure compliance (see Section VI).

In an effort to determine the particular effects on City resources of verifying satisfaction of the twelve conditions identified in the ROAR Initiative, Staff identified several words and phrases of the ROAR Initiative that, depending upon their interpretation, may impose varying levels of responsibility and burden upon the City. A few particular words and phrases that may have such a varied effect include the following:

1. "Airport" – Although the ROAR Initiative does not mention any airport by name, Staff has considered in this report only issues associated with the Burbank-Glendale-Pasadena Airport, the only existing or planned airport in the City. Staff believes that the ROAR Initiative could be interpreted, however, to apply to other facilities, such as private helicopter pads located in the City. The ROAR Initiative also does not refer directly to the proprietor of the Airport, the Burbank-Glendale-Pasadena Airport Authority. Since many of the identified conditions are within the exclusive control of the Authority, Staff believes that the party likely to be responsible for satisfying such conditions would be the Authority (and accordingly refers principally to the Authority in this report). Staff believes it is possible, however, that the ROAR Initiative could be interpreted to require or permit satisfaction of the conditions by some other entity (e.g., Airport users).
2. "New, Rebuilt, Relocated or Expanded Airport Facility" – Staff believes it possible that Paragraph 4 of the ROAR Initiative, restraining City consent to the financing or construction of any "new, rebuilt, relocated or expanded Airport facility," might be interpreted to require satisfaction of the twelve conditions for relatively minor and routine maintenance projects on the existing terminal or other Airport facilities if such project could be characterized as having the effect of expanding any such facility. Similarly, this phrase might be interpreted to require satisfaction of the twelve conditions prior to construction involving private facilities, such as hangars that are owned and operated by Airport users.
3. "Financing" – Staff is unsure how to interpret the nature and scope, and consequently the effects, of requirements concerning City consent to financing. The City does not contribute municipal funds to the operation and development of the Airport. The City performs no supervisory role in the acquisition of financing for Airport operation and development through federal and state grant programs. The City has minimal involvement in the issuance by the Authority of revenue bonds; however, such involvement is limited to holding a public hearing as required by the Tax Equity and Financial Responsibility Act and does not involve granting approval to the issuance of revenue bonds.

Principal responsibility for verifying satisfaction of the twelve conditions likely would be with the Community Development Department, and would require the addition of personnel and/or the creation of a new division designated to deal specifically with Airport issues. Staff believes that a likely scenario, at a minimum, would be the hiring of an additional senior Staff member within the existing Planning Division. This would entail the creation of a new Senior Planner position with an estimated annual cost of approximately \$80,000, assuming mid-range salary and including all benefits. Because Staff does not have the expertise to verify compliance with many of the conditions, the in-house Airport Staff likely would have to be supplemented with private consultants. Verification of conditions and review of the required documents, including EIRs and Master Plans, would be conducted through contracts with outside professionals having expertise in airport, environmental, and other related issues.

The following is a brief discussion of the particular obligations imposed upon the City in reviewing a request for consent from the Authority. Staff believes that the language of the ROAR Initiative concerning these conditions, in addition to the words and phrases discussed above, may be subject to multiple interpretations and accordingly impose varied levels of burden upon the City.

1. Curfew, Caps, and Non-Stage 3 Aircraft Ban. Staff would be obligated to review Authority records to confirm that the Airport has adopted and implemented the required curfew, caps, and non-Stage 3 aircraft ban. Staff and the City's special counsel would be required to independently verify that the curfew, caps, and ban were legally obtained, enforceable, binding and mandatory, and in the case of the curfew, irrevocable. Staff and special counsel also would have to verify that the restrictions are enforceable through fines and sanctions, including but not limited to prohibiting use of the Airport.
2. Sound Insulation Program. The ROAR Initiative does not provide guidance on the substance and scope of the sound insulation program. If the Initiative is interpreted to require City review of the program, including preparation or adoption of minimum program standards, the City would be required to contract with a private consultant with expertise in this area. The cost of such a contract would vary depending on the degree of City involvement and program development required. In addition to reviewing the sound insulation program itself, the City also may be required to review homeowners agreements and public records to verify that aviation easements are not being required as part of the sound insulation program. This would require additional Staff time and/or contract fees for special counsel.
3. Environmental Impact Report. If the Initiative is interpreted to require the Authority to prepare an Environmental Impact Report (EIR) for all property that it "owns, leases, or uses for Airport or Airport related uses," *regardless of whether the property is related to a proposed project*, then the first request for consent submitted by the Authority may require an EIR encompassing not just the proposed project but also the use of all existing property owned by the Airport and/or used for Airport purposes.

Because of the many environmental issues that are addressed in EIRs, private consultants with expertise in environmental matters would be hired by the City to review any EIRs submitted by the Authority. The particular costs for retaining these consulting services would

vary depending on the nature, scope, and number of EIRs required by the ROAR Initiative and could be predicted to range from \$50,000 for a one-time review of a large capital improvement project to several hundred thousand dollars for the continuing review of minor and routine construction projects.

4. Master Plan and Runway Projects. The Initiative requires the City to approve an Airport “Master Plan” for all Airport property but does not define the nature and scope of this document. The Initiative may be interpreted to require preparation and City approval of the type of master plan developed commonly for capital improvements at public use airports. See e.g. FAA Order 150/5070-6A, Airport Master Plans (June 1985). If the Initiative is interpreted to require substantive evaluation of such a plan, the City likely would have to contract with an airport development consultant to review the plan and advise Staff. Staff estimates the one-time cost to hire such a consultant to be approximately \$30,000. Similarly, Staff does not have the expertise to analyze proposed runway modifications to determine if such changes would “accommodate heavier or larger aircraft.” Should any such runway modifications be proposed, the City would again have to hire an outside professional to analyze the requested changes.
5. Payment in Lieu of Taxes (“PILOT”) and Infrastructure/Maintenance Payments. Staff would have to participate in calculating the PILOT and infrastructure and maintenance payments. Special counsel also would be required to review these payments to ensure that the payments reflect, but do not exceed, the maximum allowed by law. Considering the difficulty in calculating the infrastructure and maintenance payments for such services as roads, the City may have to prepare a study, similar in scope to the Airport Traffic Study being prepared jointly by the City and the Authority, to determine the Airport’s contribution to traffic on local streets. The Traffic Study is estimated to cost \$67,000.

C. Time Required to Satisfy the Twelve Conditions

One potential effect of the ROAR Initiative is that several years likely would pass from the date the ordinance is approved until the City could grant its first consent. The following is a brief discussion of the time Staff predicts to be necessary to complete the conditions that must be satisfied prior to City consent:

1. Restrictions Subject to ANCA and Part 161. Staff believes that the following conditions of City consent would require prior FAA approval: (i) curfew on aircraft operations and engine run-ups, (ii) cap on annual operations, (iii) cap on annual passengers, and (iv) the ban on all aircraft not originally certified as meeting Stage 3 noise levels. The process for obtaining FAA approval pursuant to the Airport Noise and Capacity Act of 1990 (“ANCA”) and its implementing regulations, FAR Part 161, can be predicted to take two years or longer.

Since Spring 2000, the Authority has been preparing a study concerning a curfew and alternative restrictions for the Airport. Although the Authority might be able to revise the scope of this study to include the other restrictions subject to ANCA and Part 161 while

building upon the work already completed, the Authority only could limit the time required by a few months considering the procedural requirements of ANCA and Part 161.

Staff believes that the schedule described in the preceding paragraphs reflects only the *minimum* time that would be required to satisfy these conditions. Staff understands that the FAA has not yet approved any request for a noise or access restriction affecting Stage 3 aircraft, and Staff's review of Part 161 and relevant FAA guidance documents suggests that the standards for obtaining FAA approval are very high. Staff believes that it reasonably could take many years for the Authority to obtain FAA approval for some or all of the restrictions and that the FAA may never approve certain restrictions.

2. Sound Insulation Program. The Authority has both an FAA-approved Noise Compatibility Program, prepared pursuant to FAR Part 150, and a State-approved Noise Impact Area Reduction Plan. These plans include a program for sound insulation of residences and public facilities located within the Noise Impact Area. Staff accordingly does not believe that the condition of a sound insulation program would require much, if any, time for the Authority to satisfy.
3. Environmental Impact Reports. As discussed above, the ROAR Initiative does not define with specificity the scope of the requirement to prepare an environmental impact report for property owned, leased, or used for Airport or Airport related purposes. The initial requirement to prepare such a report may be substantial. Staff predicts that it would take between twelve and twenty-four months to prepare a comprehensive EIR on all property used for Airport and Airport related purposes. Staff further predicts, based upon a review of the time required to complete reports for development projects similar in size to the Airport, that completion of an environmental impact report for, for example, a new passenger terminal, would take approximately six to eighteen months.

The Authority previously has prepared final and supplemental environmental impact reports for constructing a new terminal. Since the ROAR Initiative requires the Authority to "prepare and certify a new Environmental Impact Report," Staff believes that the ROAR Initiative could be interpreted to prohibit the Authority from using or relying solely upon the prior environmental impact reports to satisfy this condition. The Authority might, however, be able to limit the amount of time necessary to prepare a new environmental impact report by using, to some extent, the information contained in the prior reports.

4. Master Plan. Since, as described above, the ROAR Initiative does not define the scope of the Master Plan, it is difficult to predict the amount of time that would be necessary to satisfy this condition. Assuming for purposes of analysis that the Master Plan required by the ROAR Initiative is similar in nature and scope to the master plans prepared commonly for airport development and based upon Staff's experience in preparing and reviewing development plans generally, Staff believes that completing and approving a master plan could take between six and eighteen months.

D. Effect on Short- and Long-term Use of the B-6 Property

In 1999, the Authority acquired a portion of the B-6 Property (the Adjacent Property) and a beneficial interest in the remainder of the B-6 Property (the Trust Property). The 1999 Title Transfer Agreements between the City, the Authority, and the Trustee obligated the City and the Authority to negotiate by May 2000, a development agreement on the use of the B-6 Property for construction of a new passenger terminal. Since the parties were unable to finalize a development agreement by the deadline, the Trustee is obligated to sell the Trust Property for non-airport purposes. The Authority is marketing this property for sale. The City maintains an interest in the B-6 Property that prohibits any party, either the Authority or a subsequent owner, from using the property for purposes of expanding or enlarging the Airport.

The ROAR Initiative would impose additional restrictions on use of the B-6 Property for Airport purposes, either prior to sale of the Trust Property by the Trustee or in the future. Specifically, in addition to amending the Title Transfer Agreements and terminating or amending the City's restrictive covenant, the Authority would have to satisfy the conditions of the ROAR Initiative detailed herein. Staff believes that it is unlikely that all of these actions could be accomplished prior to sale of the Trust Property and, as indicated above, some may take several years or longer.

VI. EFFECTS AFTER GRANTING CONSENT

A. Cost of Monitoring and Enforcement

In addition to holding an election where necessary and verifying that the twelve conditions have been satisfied, the ROAR Initiative may be interpreted to require ongoing monitoring by the City of certain Authority and airport activities. The costs of providing these services is unclear; the Initiative states that the Airport shall be responsible for "all costs of enforcement and collection" related to violations of the Initiative, but the scope of this requirement is not defined. This provision may, for example, require the Authority to contribute financially to any or all of the following activities: investigation of complaints, noise monitoring and investigation of non-Stage 3 aircraft operations, investigation of curfew violations, monitoring of the sound insulation program, and monitoring of PILOT and infrastructure payments.

Below is a brief description of the particular obligations associated with these potential monitoring requirements:

1. Investigation of Complaints. The ROAR Initiative requires the City Council to designate a City department to investigate all complaints related to alleged violations of the Initiative and "file reports with all appropriate authorities." No existing City department has the expertise to perform such a function. As discussed above, a new City department or division may be required to deal with Airport monitoring issues. In addition to staffing costs, the creation of a new department would generate additional ongoing overhead and administrative costs that cannot be determined without further study. A one-time consultant fee would be required to determine the impact of the new department on existing City departments and services. If Staff were added to an existing City department, one scenario would involve the addition of

planning Staff to supplement a senior Staff person hired to deal with pre-consent issues. The annual cost to the City of hiring two additional planners at the Assistant and Associate levels would be approximately \$125,000, assuming mid-range salaries and including all benefits. Such planners would have expertise in airport related issues such as noise monitoring and aircraft operations.

2. Noise Monitoring. The ROAR Initiative requires the City to provide “independent noise monitoring of aircraft activity in the City,” and calls for the City to hire a noise consultant if necessary. The Authority has an extensive noise monitoring system, but the Initiative could be interpreted to preclude the City from relying on data generated by the Authority and require the City to duplicate existing systems. The City has neither the equipment nor expertise to install and operate such a monitoring system, and would have to hire noise consultants for such a task. The Initiative requires aircraft noise monitoring “in the City,” and it is not clear if this would require monitoring only in the vicinity of the Airport or citywide. Staff estimates that the cost of hiring a private consultant to install a system similar to that used by the Authority in the vicinity of the Airport could be \$1,000,000 or greater. The installation of a citywide noise monitoring system would exceed that amount. These costs would not include ongoing monitoring of the noise data and maintenance of records to provide evidentiary support for potential noise complaints, predicted to cost \$50,000 annually. The Initiative does not identify the scope of purposes for which the City must collect noise data. If the data must be made available to the public such as through published reports or the Internet, additional costs would be incurred to provide such information.

The ROAR Initiative provides that the City’s noise monitoring and hired consultant would “provide the basis for enforcement” of the Initiative in court. The Initiative does not, however, specify any requirements or limitations with regard to noise levels. The only condition of the Initiative related to noise is the ban on non-Stage 3 aircraft. Investigation beyond noise monitoring may be required to determine stage certification level. This may require Staff or a consultant to review air traffic control tower records regarding aircraft operations. The cost of such monitoring would be significant, but is difficult to quantify.

3. Investigation of Curfew Violations. This may include reviewing air traffic control tower logs, but may also require on-site monitoring of aircraft operations to verify the actual time that such operations occur and allow the City to directly witness curfew violations. Once a curfew violation is confirmed, additional research would be required to determine whether the aircraft operation was performed for police, fire, military, or emergency purposes. If the aircraft operation was not exempted as such an operation, further research would be required to determine if the curfew violation was caused by “inclement weather” or “mechanical emergencies incurred while in flight.” The scope of “inclement weather” and “mechanical emergencies” is not defined in the ROAR Initiative. Considering that an aircraft may have numerous flights through numerous airports in the course of one day, the manner in which this restriction is interpreted may determine the degree of research that would be required. The cost of conducting an ongoing curfew monitoring program is difficult to estimate. If the Authority were required to maintain accurate records of aircraft operations and provide such data to the City, the City’s initial role may be that of researching records maintained by the Authority. If the City were required to maintain independent records on aircraft operations,

several Staff members and/or consultants could be required on a full-time basis to administer such a program. Similarly, a determination on the scope of the inclement weather and mechanical problems exception would dictate the amount and level of research required to verify compliance and determine if and when exceptions apply. The cost to the City of using Staff and outside consultants to comprehensively monitor aircraft operations and verify curfew compliance could be several hundred thousand dollars annually.

4. Sound Insulation Program and Payments to the City. The City also may be obligated to monitor the sound insulation program and verify that aviation easements are not being required. As with the pre-consent period, monitoring of such a program would require involvement of Staff or outside consultants and special counsel to review homeowner agreements and other documents. The annual costs to the City would be dependent upon the degree of monitoring required of the City. Similarly, ongoing monitoring by Staff and special counsel of PILOT and infrastructure improvement and maintenance fees may also be required to ensure compliance with the ROAR Initiative and applicable laws.

B. Fines for Violating Initiative

The ROAR Initiative provides that, as a condition of City consent, the Airport must “establish a legal means to pay the City a fine of \$5,000, adjusted annually for inflation, for each day of each violation of this initiative.” This provision may be interpreted to require direct payments to the City under certain circumstances. By its terms, the Initiative appears to impose requirements only upon the City. Therefore, the Initiative may be interpreted such that only the City can be in violation thereof, such as by approving an application when the specified conditions have not been satisfied. Such an interpretation would result in the Airport being required to pay \$5,000 per day of the violation *to* the City, for a violation *by* the City. Given the City’s general commitment to comply with all applicable laws, Staff believes that this scenario is unlikely and the amount of revenue generated would be negligible. Alternatively, the Initiative may be interpreted to require the City to continuously monitor the Authority’s implementation of the restrictions and programs that constitute the conditions for City consent, and collect a fine from the Authority for each day of each violation of any of those terms. Such a penalty may apply to the requirements for a curfew; caps on aircraft operations and passengers; ban on non-Stage 3 aircraft; sound insulation program; not requiring aviation easements; and lengthening, adding, or modifying runways.

It is difficult to predict the level of compliance for any of the conditions specified in the ROAR Initiative and any resulting fine revenues. Some violations may be unavoidable or very difficult to avoid for economic and practical reasons. For example, if an aircraft departing the Airport were delayed at the gate due to a mechanical problem (only mechanical problems “incurred while in flight” are exempted by the Initiative) and would be forced to take off after 10 p.m., the aircraft pilot or carrier would have to determine whether to violate the curfew or cancel the flight and make accommodations for passengers. Similarly, if an aircraft bound for the Airport were delayed at its origin for a reason other than mechanical problems or weather (as exempted by the Initiative) such that it would land at the Airport after 10 p.m., the pilot or carrier would have to determine whether to proceed to the Airport in violation of the curfew or cancel the flight and accommodate the passengers. If an executive jet service needed to provide service to the Airport

for a client and had only Stage 2 aircraft available at the time, the company would have to choose between violating the non-Stage 3 aircraft ban or refusing to provide the requested service and perhaps losing a client.

Given the penalties stipulated in the ROAR Initiative for non-compliance with the curfews and caps, including the prohibition of Airport use, Staff believes that the number of violations by Airport users, and resulting revenue to the City, would be minimal. The Initiative does not stipulate penalties for Airport users in violation of the non-Stage 3 aircraft restriction, and the potential revenue generation therefore is unknown.

The ROAR Initiative prescribes penalties for Airport user noncompliance and demands that the restrictions implemented by the Airport be enforceable, binding, and mandatory. The Initiative does not explicitly address the possibility that one or more of the restrictions may be invalidated by a court following its enactment. Further, the Initiative does not excuse the Airport from paying the prescribed fines to the City or levying the related penalties on Airport users. If the Initiative is interpreted such that the Authority is not excused from paying fines for invalidated restrictions, the result could be a continuing and sizable stream of payments to the City due to violations of restrictions that the Authority cannot enforce.

VII. EFFECTS OF RESTRICTIONS REQUIRED TO BE IMPOSED BY THE AIRPORT

As indicated above, Staff has determined that the curfew, operations and passenger caps, and ban on all non-Stage 3 aircraft would be subject to ANCA and Part 161, which require that the airport proprietor analyze the costs and benefits of proposed restrictions. See 14 C.F.R. §§ 161.205(a) and 161.305(e). The time limits prescribed by the California Elections Code do not allow sufficient time to perform a cost-benefit analysis that covers to any significant degree the analysis to be performed in a Part 161 study. Moreover, since the Authority has not yet released its Part 161 study concerning the curfew and alternative restrictions, the City does not have the benefit of information that previously may have been gathered on this subject.

Staff nevertheless has considered the type of effects that may be expected as a result of the use restrictions and other conditions imposed by the Initiative.

A. Effects on the City

Staff finds that the principal effect on the City of the restrictions and other conditions will be in the form of lost tax revenue. The City receives direct and indirect tax revenues from airport operations in several forms.

1. Airport users pay personal property taxes, the largest portion of which is for aircraft that are based at the Airport at the time of assessment. The assessed value of the general aviation aircraft for the 2000-01 fiscal year is \$443,321,400, resulting in tax revenues of approximately \$1,477,700 to the City.
2. The City levies a parking tax that is ten percent (10%) of gross receipts. The total parking revenue for fiscal year 1999-2000 for the Airport and other privately operated parking lots in the vicinity of the Airport was approximately \$1,774,790, with Authority-owned lots comprising the majority of the total.

3. The City collects sales taxes from such activities as car rentals, sale of jet fuel, and sales by concessioners. In fiscal year 1999-2000, the City received approximately \$357,000 in sales tax revenue from rentals and sales connected with Airport activities.
4. Commercial air carriers and other Airport users pay a possessory interest tax on the value of their leasehold interests. The Golden State Redevelopment Project Area expects to receive \$405,000 during the 2000-01 fiscal year for possessory interests.
5. The Golden State Redevelopment Project Area receives property tax revenues related to unsecured assessed valuation which relates primarily to commercial airplanes. The Golden State Redevelopment Project Area expects to receive approximately \$2,479,000 in unsecured property taxes related to the Airport properties.

The following is a discussion of the potential fiscal impacts associated with particular restrictions:

1. Aircraft Operations and Passenger Caps. The ROAR Initiative may be interpreted such that the limitation on aircraft operations would apply only to commercial operations, or it may be interpreted to apply to general aviation, charter, cargo, and all other types of aircraft operations. In addition, depending upon the structure of the caps, the Authority may have to close the Airport at certain times of the day, week, month, or year to comply with the caps. These limits may reduce the numbers of passengers and aircraft that would otherwise use the Airport if restrictions were not in place. A potential reduction in the number of persons and aircraft at the Airport would in turn reduce the City's tax revenues from Airport operations. If the number of commercial and general aviation aircraft allowed at the Airport were restricted, the number of aircraft based at the Airport may decline, decreasing property tax revenues. A cap on the number of passengers utilizing the Airport would reduce parking needs and effectively limit the number of vehicles parking in Airport and other nearby parking lots, reducing the amount of parking taxes that could otherwise be collected by the City. Restricted numbers of aircraft operations and passengers utilizing the terminal facility may also reduce the amount of jet fuel purchased by aircraft operators and concession purchases by passengers, reducing potential sales tax revenues.
2. Ban on Non-Stage 3 Aircraft. The ROAR Initiative requires a ban on all aircraft not originally manufactured to meet FAR Part 36 Stage 3 noise standards. The Initiative may be interpreted to restrict the use of the following types of aircraft: Stage 2 aircraft; Stage 2 aircraft modified with hush kits to comply with Stage 3 noise levels; propeller driven aircraft; and successor aircraft to Stage 3 aircraft that are likely to be mandated in the United States within the next few years (i.e., so-called Stage 4 aircraft).² The result of this restriction likely would be that commercial, commuter, general aviation, cargo, and other users would have to arrange their aircraft fleets such that only Stage 3 aircraft used the Airport. If users could not adjust their fleet mix or did not believe it economical to do so, users might relocate operations to another airport. As a consequence of reductions in aircraft operations and/or reductions in the number of operators and aircraft based at the Airport, this restriction has the

² Since police flights are specifically exempted from the provisions of the ROAR Initiative, the Initiative may be interpreted such that the City's police helicopter fleet (currently based at the Airport) would not be subject to these limitations. The City would then not be required to replace any helicopters that did not comply with Stage 3 noise levels.

potential to reduce the amount of revenue paid to the City in the form of personal and unsecured property, parking, possessory interest, and sales taxes. Staff has not prepared a specific projection of these potential losses.

3. Ban on Use of Airport by Violators. The ROAR Initiative requires the Airport to implement rules to enforce the mandated curfews and caps. One such enforcement rule would be “prohibiting Airport use” by violators. The Initiative does not specify under what circumstances a prohibition on use would be enforced or how such a prohibition would be applied. Although it is not clear that the Authority could legally prohibit intended users from operating at the Airport, the Initiative could be interpreted to require the Authority to impose such a sanction. Any prohibition on flights by a commercial carrier would result in lost tax revenue from concession and fuel sales and parking as scheduled flights were diverted to other airports or cancelled. If the prohibition were for an extended period of time such that a carrier moved its Burbank-based operations to another airport, the City would lose the personal and/or unsecured property taxes paid on such aircraft.

The ROAR Initiative may have the effect of generating revenue for the City. One of the conditions identified in the Initiative is that the Airport must reimburse the City for lost property tax revenues. This may be interpreted to mean that the Authority must pay the City the equivalent of the property taxes the City would otherwise receive if a private entity owned the Airport property, commonly referred to as a Payment in Lieu of Taxes or PILOT. Further, this may be interpreted to include lands currently owned by the Authority, or may be interpreted only to include lands purchased by the Authority in the future for a new terminal or other project. Since the Initiative does specify the properties or projects that would be affected by such payments, it is difficult to predict the potential revenue that would be realized by the City.

The limit on property taxes as prescribed by the California Constitution is one percent (1%) of a property’s assessed value. However, the City only receives a portion of property tax revenues. The Initiative may be interpreted to mean that the Authority must pay the City as a condition of City consent the full one percent that private property owners would be required to pay. Alternatively, the Initiative may be interpreted to mean that the Authority must only reimburse the City for the portion of the one percent (1%) that it otherwise would receive. In previous negotiations involving the City, the Authority, and the FAA, the FAA suggested that the Authority’s payments must be no greater than the portion of the property tax that the City would otherwise receive for the property. This issue is further complicated by the fact that, because the Airport is located in the Golden State Redevelopment Project Area, the Redevelopment Agency would normally receive a portion of property tax revenues. The ROAR Initiative does not address how a PILOT would be divided between the City and the Agency, so the potential impact is unknown.

B. Effects on Parties Other Than the City

Staff has not attempted to evaluate comprehensively or quantify the potential costs and effects *to entities other than the City* of the twelve conditions that must be satisfied prior to City consent. In particular, Staff has not attempted to evaluate comprehensively or quantify the costs and effects of the (i) curfew on aircraft operations and engine run-ups, (ii) cap on annual operations,

(iii) cap on annual passengers, or (iv) the ban on all aircraft not originally certified as meeting Stage 3 noise levels. As described above, this task would be conducted as part of the Part 161 study required for these restrictions.

For purposes of this report, Staff has identified and enumerated below a general description of the potential effects associated with the twelve conditions, again based upon a reasonable interpretation of the ROAR Initiative. Potential benefits include a reduction in the size of the Noise Impact Area, resulting in an improvement in the noise environment, quality of life, and possibly real property values, and a limit on traffic congestion associated with the Airport.

Potential costs include the following:

- Airport users, including commercial air carriers, general aviation users, and cargo operators may lose revenue and/or incur additional costs as a result of the curfew, cap on annual passengers and aircraft operations, and ban on all non-Stage 3 aircraft.
- Some Airport users may be compelled to relocate to another airport as a result of these restrictions.
- The caps on annual operations and passengers may limit the Authority's ability to generate revenue from such sources as landing fees, parking fees, etc.
- In the event that potential Airport users are unable to use the Airport or relocate to another airport as a result of one or more of the restrictions, the Authority may lose revenue from such sources as landing fees, gate leases, fixed-base operator and other leases, etc.
- The Authority will incur significant costs to prepare the Master Plan and environmental impact report(s).
- Staff believes that the Airport's impact on the local economy is not significant in relation to other influences in the community and that continued operations at current levels would not have a negative effect on the local economy. Staff is not aware of any evidence suggesting that the level of Airport activity, and thus the Airport's economic impact, would decline in any significant manner from current levels if the Authority imposed the identified use restrictions.

VIII. EFFECTS ON CITY ORDINANCES AND PLANS

Although the sponsors of the ROAR Initiative did not identify or include in the petition the sections of the Burbank Municipal Code that would be amended by the ROAR Initiative, Staff believes that the ROAR Initiative would amend several sections of the Burbank Municipal Code and the City's responsibilities under the Code.

1. Zoning and Building Codes. The ROAR Initiative could be interpreted to impose additional requirements on land use and development beyond the requirements of the existing code. For example, "air passenger facilities" are currently permitted uses in the Airport zone pursuant to the zoning use list (Burbank Municipal Code Section 31-502). In approving construction of airport facilities in the Airport zone today, the City would not be required to verify compliance with any conditions other than applicable zoning and building codes. Similarly, the rezoning of land for Airport use would not require the City to make any

specific findings on conditions other than verifying consistency with the General Plan. Because of the conditions it places on rezoning and construction, the ROAR Initiative may reflect a change in the Zoning Code that requires the City to verify compliance with the conditions prior to any approvals for rezoning or construction. Since the ROAR Initiative may also apply to the City's consent for minor construction projects that do not involve the Zoning Code, but would likely encompass the issuance of building permits, the ROAR Initiative effectively conditions the issuance of building permits on satisfaction of the twelve conditions in addition to current Building Code requirements. In this manner, the ROAR Initiative appears to amend either or both the Zoning Code and the Building Code.

2. General Plan. The ROAR Initiative does not directly address the General Plan or make provisions for amendments thereto. Therefore, it is not clear that the Initiative and its stipulated conditions would be interpreted to apply to amendments to the General Plan text or the Land Use Plan Map. Further, the ROAR Initiative requires the City to "conform all applicable laws" to the Initiative. The General Plan is a policy document that guides the development of the City but is not part of the Municipal Code, so it is not known if any portions of the General Plan found to be inconsistent with the ROAR Initiative would require amendment to conform to the Initiative. The General Plan Land Use Element includes general goals and policies related to the airport. Among these are goals and policies intended to achieve compatibility between the Airport and surrounding uses with regard to noise impacts. In this regard, the ROAR Initiative pursues these General Plan goals through conditions requiring limits on the types of aircraft using the Airport and the times of aircraft operations. The ROAR Initiative, through its prohibition of aviation easements in conjunction with a sound insulation program, conflicts with a General Plan policy that describes such easements as one possible means of mitigating noise impacts. Because of the specific requirements of the ROAR Initiative and the various ways that the Initiative may be interpreted, it is difficult to determine the consistency of the Initiative with the broad policies and goals of the General Plan.
3. Elections Code. In November 2000, the Burbank Municipal Code was amended by adding Section 11-112, which requires prior voter approval of any discretionary act of the City or an agreement between the City and the Authority for a relocated or expanded airport terminal project. The ROAR Initiative includes a similar but distinct requirement for voter approval. These voting requirements can be compared as follows:
 - Section 11-112 applies to City approval of any discretionary act or an agreement with the Authority, while the ROAR Initiative applies to the City's final approval for financing or construction.
 - Section 11-112 applies to any relocated or expanded terminal project, while the ROAR Initiative refers only to an airport terminal, which could be interpreted to mean construction of a new terminal but not expansion of the existing terminal.
 - Section 11-112 does not prescribe the required percentage of votes necessary to authorize the City to grant its approval (therefore requiring only approval by a majority vote pursuant to the California Constitution and state Elections Code), while the ROAR Initiative requires a two-thirds affirmative vote.

Since the ROAR Initiative does not purport to repeal Section 11-112, the two voting requirements might remain upon passage of the ROAR Initiative to the extent that they can be read consistently. For example, the Authority might seek City approval for expansion of the existing passenger terminal, thus triggering the voting requirements of Section 11-112 but not the voting requirements of the ROAR Initiative. Should the Authority submit an application for a new terminal, however, the voting requirements of the ROAR Initiative would be triggered, arguably superceding the requirements of Section 11-112 by requiring a two-thirds affirmative vote rather than a majority vote.

EXHIBITS

Exhibit A Text of ROAR Initiative