

C-3424

Memorandum of Understanding Regarding Preparation Of An Environmental Impact Report

The County of Orange ("County"), as the owner and operator of John Wayne Airport ("JWA"), the City of Newport Beach, a charter city and municipal corporation ("City"), Stop Polluting Our Newport Corporation, a California tax exempt corporation ("SPON"), and the Airport Working Group of Orange County, Inc., a California tax exempt corporation ("AWG") (each individually referred to as a "party," collectively referred to herein as the "Parties") have entered into this Memorandum of Understanding ("MOU") effective April 16th, 2013.

The purpose of this MOU is to allow the Parties to define procedures and protocols they agree to follow with respect to the preparation of an Environmental Impact Report ("EIR") pursuant to the requirements of the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §21000 et seq.) and State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.), which will study the environmental implications of the Project, as defined in Section 1.7, *infra*. The Project, in part, would constitute the second extension of the stipulation that settled litigation in *County of Orange v. Air California, et al.* (U.S.D.C., C.D. Cal., Case No. CV-85-1542 TJH (Mcx) (1985)) ("Action") and imposed certain restrictions on the development and operation of JWA. The MOU is made, in part, in light of the following recitals:

1.0 RECITALS

1.1 In November 1985, the Parties, by their respective counsel of record, entered into a stipulation to settle the Action between the Parties concerning the proposed expansion of JWA ("the 1985 Settlement Agreement"). On December 15, 1985, the United States District Court entered a final judgment pursuant to the 1985 Settlement Agreement settling the Action ("Judgment"). Under the terms of the 1985 Settlement Agreement, the Court retained jurisdiction to enforce the terms of the 1985 Settlement Agreement.

1.2 On May 22, 2001, the County Board of Supervisors ("Board") approved a Memorandum of Understanding between the County and City pursuant to which the County would act as lead agency for the preparation of an EIR that would support the amendment and extension of the 1985 Settlement Agreement.

1.3 After substantial negotiations between the Parties, the results of which were evaluated in a certified EIR, the Parties executed a stipulation in February 2003 to modify the Judgment ("2003 Amended Stipulation"). The term of the 2003 Amended Stipulation is through December 31, 2015. Notwithstanding the foregoing, however, the Parties agree that none of the operational or facility limits contained in the 2003 Amended Stipulation will expire at the end of the 2003 Amended Stipulation's term, absent affirmative action by the Board to alter those limits that is taken in accordance with CEQA and other applicable laws.

1.4 On or about February 25, 2003, the United States District Court accepted the 2003 Amended Stipulation and modified the Judgment to conform to the terms contained in the 2003 Amended Stipulation ("Modified Judgment"). The Modified Judgment allows for, in part: (1) a maximum of 85 Class A Average Daily Departures ("ADDs") for passenger commercial air carrier service; (2) a maximum of four Class A ADDs for commercial cargo service; (3) 10.8 million annual passengers ("MAP"); and (4) 20 passenger loading bridges. (See 2003 Amended Stipulation, ¶¶39-41. Relatedly, the definitional provisions provided in the 2003 Amended Stipulation at ¶¶18-35 govern the interpretation of this MOU, to the extent applicable.)

1.5 The Modified Judgment constituted "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990" (49 U.S.C. § 47524), and was found by the Federal Aviation Administration ("FAA") in 2003 to "not reduce or limit aircraft operations or affect aircraft safety." Therefore, the 2003 Amended Stipulation and Modified Judgment were "grandfathered" under the Airport Noise and Capacity Act of 1990.

1.6 The Parties are presently discussing the possibility of further extending and amending the terms of the 1985 Settlement Agreement, as modified by the 2003 Amended Stipulation. For purposes of this MOU, this proposal is referred to as the "Proposed Amended Stipulation." To permit the Parties to fully consider the Proposed Amended Stipulation, evaluate the environmental consequences, if any, and benefits of the Proposed Amended Stipulation, and to facilitate the ability of other interested parties, including airport users and other affected communities, to provide input, the Parties have agreed to work cooperatively in the preparation of the appropriate CEQA documentation. The Parties do not anticipate the need for "major federal action" to implement the Proposed Amended Stipulation; therefore, the Parties do not believe that any federal agency will be required to prepare an environmental analysis under the National Environmental Policy Act of 1969, as amended ("NEPA").

1.7 For purposes of CEQA, the proposed "Project" is the Proposed Amended Stipulation. More specifically, the Project that shall be studied in the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by Section 5.0, *infra*, is as follows:

A. Term: The term of the Proposed Amended Stipulation between the Parties shall be extended to December 31, 2030. All Parties acknowledge and agree that the inclusion of a "term" shall in no way limit the ability of the Parties to enter into a subsequent stipulation to amend/modify the Judgment and that the inclusion of a "term" does not result in the automatic termination of the curfew at the end of the "term."

B. Curfew: The existing curfew regulations and hours of operation for JWA, as contained in Sections 2-1-30.1 through 2-1-39 of the County's Codified Ordinances and paragraph 4 at page 62 of Board Resolution 85-255 (February 26, 1985), shall remain in effect until at least December 31, 2035.

C. MAP Limitation: Until December 31, 2020, JWA shall serve no more than 10.8 MAP in any Plan Year (see 2003 Amended Stipulation, ¶¶29-30). Beginning January 1, 2021 through December 31, 2025, JWA shall serve no more than 11.8 MAP. If JWA serves more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA shall serve no

more than 12.5 MAP. If JWA serves no more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA shall serve no more than 12.2 MAP.

D. Regulated ADD Limitation: Until December 31, 2020, there shall be a maximum of eighty-five (85) Commercial Air Carrier Class A ADDs and four (4) Commercial Cargo Air Carrier Class A ADDs serving JWA for a combined total maximum of eighty-nine (89) Class A ADDs. (A maximum of two (2) of the (4) Commercial Cargo Class A ADDs may be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than four (4) ADDS). Beginning January 1, 2021 through December 31, 2030, there shall be a maximum of ninety-five (95) Commercial Air Carrier Class A ADDs and four (4) Commercial Cargo Air Carrier Class A ADDs serving JWA for a combined total maximum of ninety-nine (99) Class A ADDs. (A maximum of two (2) of the (4) Commercial Cargo Class A ADDs may be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than four (4) ADDS).

E. Passenger Loading Bridges: Until December 31, 2020, there shall be a maximum of twenty (20) passenger loading bridges at JWA. Beginning January 1, 2021 through December 31, 2030, there shall be no limit on the number of passenger loading bridges at JWA.

The objectives of the Project are enumerated in "Exhibit A" to this MOU. Additionally, at a minimum, the alternatives to the Project outlined in the attached "Exhibit B" to this MOU, as well as the CEQA-mandated "no project" alternative, shall be considered and analyzed in the EIR to an equal level of detail as the Project. In accordance with the discretion afforded to the County under CEQA, the County is free to consider other alternatives and mitigation measures that feasibly avoid, mitigate, or minimize the Project's significant environmental impacts, if any.

1.8 The CEQA Guidelines authorize the City and County to enter into a cooperative agreement, such as this MOU, to define the roles and responsibilities of each agency in assessing the environmental impacts of the Project.

1.9 The Parties cannot presently predict the precise period of time which will be required to prepare, consider and circulate the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by this MOU. However, the Parties acknowledge that it is an objective of all Parties to proceed expeditiously to consideration of the Project by the Newport Beach City Council and by the County's, AWG's, and SPON's respective Boards, and the Parties acknowledge their mutual intent to use their respective best efforts to proceed expeditiously with the preparation of CEQA Documents that meet all of the procedural and substantive requirements of CEQA.

1.10 The execution of this MOU by the County is not to be construed as an "approval" of the Project, as that term is defined for purposes of CEQA. As indicated above, and despite the execution of this MOU, the County is retaining the full discretion to adopt an alternative, impose

mitigation measures, or disapprove the Project altogether once the requisite CEQA review is completed. Again, the fundamental purpose of this MOU is to define the Project to be subject to review based upon a mutually agreeable project description, and to provide the procedures and mechanisms by which CEQA review for the Project will be conducted; at all times, such review efforts shall comply with all applicable CEQA mandates.

NOW, THEREFORE, the Parties agree as follows:

2.0 Parties' Roles. As the proprietor of JWA, the County will act as "lead agency" and the City will be a "responsible agency" in the preparation of the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by this MOU for the Project. As provided in this MOU, the County will consult with, and consider input from the City, SPON and AWG on issues related to the preparation of the CEQA Documents. However, the County will have the ultimate and final responsibility for the preparation of the CEQA Documents and any related management of, and directions to any consultants assisting in the preparation of the CEQA Documents as described further in Section 5.2, *infra*.

3.0 Representatives. The Parties have each designated Representatives (who are the names listed in Sections 10.1-10.4, *infra*) to act on their behalf in performing the duties required by this MOU ("Designated Representatives").

4.0 Consultants.

4.1 Retention of Consultants.

The County may retain experts, professionals, consultants, and subconsultants ("Consultant(s)"), to provide information, in the form of studies, reports and analysis, or otherwise assist in the preparation of the CEQA Documents (as that term is defined in Section 5.1, *infra*). Each Consultant shall be bound by a scope of work prepared by the County, after consultation with the Designated Representatives. The County will select the Consultant(s) to assist in the preparation of the CEQA Documents to the extent it deems such action necessary or desirable, after consultation with the Designated Representatives. Any final decision regarding the identity of Consultant(s) selected, and the terms of the scope of work for each such Consultant, will be within the sole discretion of the County.

4.2 Payment of Preparation Costs for CEQA Documents.

4.2.1 The cost of all work (including all fees, charges and costs) performed and work product produced by the Consultants, other than attorneys, on the CEQA Documents (as that term is defined in Section 5.1, *infra*) shall be the equal responsibility of the City and County. Within ten (10) days after approval of this MOU by the Parties, the City will deposit the sum of \$100,000.00 to a segregated account with JWA. JWA will withdraw amounts equal to fifty percent (50%) of the costs for the CEQA Documents from the segregated account as payments are made. JWA will provide a statement to the City every thirty (30) days thereafter of amounts withdrawn from the segregated account, showing charges made during the preceding monthly period and the fifty percent (50%) withdrawn from the account, and the City will, within ten (10)

days, replenish the deposit account by whatever amount is necessary to return the account to a credit balance of \$100,000.00. Upon certification of the EIR, or upon termination of this MOU under Section 9.0, and the payment of all outstanding obligations incurred by the County, the balance of funds on deposit shall be refunded to the City. Only the costs of work performed and work product produced by the Consultants to study and analyze the Project, and alternatives thereto (as defined in Section 1.7, *supra*) shall be the responsibility of the City. Each party to this MOU shall be responsible for all costs and expenses related to work performed by their own employees, attorneys or professionals that the party has retained on its own.

5.0 Document Preparation. The following principles shall apply to the preparation of the EIR and related CEQA documents:

5.1 As the lead agency, the County shall be responsible for preparing all appropriate "CEQA Documents," including, but not limited to, Initial Study(ies); Notice(s) of Preparation; Notice(s) of Availability and Completion; screencheck, draft, recirculated, and/or final EIRs, and supporting technical studies/reports; the Mitigation Monitoring and Reporting Plan; CEQA Findings; and, related environmental analysis and approval documents.

5.2 Although this MOU provides mechanisms for a collaborative approach to the analysis of the Project's environmental impacts pursuant to CEQA, neither the City, SPON or AWG has the authority or right to interfere with the County's exercise of its discretion and judgment in assessing the Project's and the alternatives' environmental impacts in the CEQA Documents.

6.0 Confidentiality. To the extent consistent with the California Public Records Act (Gov. Code, §6250 et seq.), CEQA, and any process of law, all drafts of documents including, but not limited to, draft CEQA Documents prepared under this MOU will be maintained as confidential.

Therefore, during preparation of the CEQA Documents, the Parties, and their Designated Representatives, as set forth herein, will not cause or permit pre-circulation draft materials to be provided to any person not directly responsible for some aspect of the preparation and review process for the specific CEQA Document(s) at issue, or whose review of any such materials is not necessary and appropriate to completion and consideration of the Project. Generally speaking, pre-circulation draft materials may be provided to each party's Council or Board, employees, attorneys or professionals that the party has retained or designated as a representative to the process to advance its interests, as well as the Consultants. Prior to providing any pre-circulation documents to any person who is not a Designated Representative, as provided herein, the party providing the information shall have the person execute an agreement whereby the person agrees to be bound by the confidentiality provisions set forth in this section of this MOU.

If any party to this MOU receives a Public Records Act request or other process of law requesting or demanding any such pre-circulation disclosure of draft materials, that party will immediately provide copies of any such request or process to the other Parties and promptly consult with the other Parties prior to taking any action or responding to such a request or demand.

7.0 Coordination Between the Parties. The Designated Representatives of the Parties shall conduct weekly meetings, as necessary, on a mutually agreeable day to review CEQA Documents that have been prepared, discuss issues related to those documents, report on the status of document preparation, and report on meetings with interested parties or discuss other issues related to the CEQA process/documents.

7.1 The Parties shall each use their best efforts to promptly review all documents and be prepared to discuss issues related to each document within ten (10) working days after receipt of the pre-circulation draft document(s).

7.2 The Parties shall share any non-privileged information relevant to the Project, including all studies, reports and draft environmental documents previously prepared by any party regarding JWA. In addition, each party shall, upon request, provide the other Parties with a copy of any non-privileged study, report or analysis that is reasonably related to the preparation of the CEQA Documents under this MOU. If available, the study, report or analysis shall be provided in the most convenient form for use (computer disk or e-mail) by the County or its Consultants, except that no party shall be required to incur any expense associated with converting the document to the "most convenient form."

8.0 Litigation Defense and Indemnification, and Waiver.

8.1 In the event any litigation is initiated against any one of the Parties to this MOU on any matter related to the MOU or its implementation, including, but not limited to, the defense of an action challenging any procedural or substantive aspect of the County's environmental process and subsequent approvals, the City will, within thirty (30) days of its receipt of any invoice or statement provided to it by the County, reimburse the County for any customary and reasonable fees, costs, or other expenses incurred by the County in the defense of any such action. In the event that litigation is initiated, the County shall, after consultation with the City, have the absolute right to retain legal counsel of its choosing, subject to the caveat that such legal counsel's fees, costs and other expenses shall be customary and reasonable for the type of service(s) provided. The City shall indemnify the County until all legal proceedings have been concluded, and this obligation continues even if the County's approvals are not validated in the judicial proceeding(s).

8.2 The City shall also indemnify SPON and AWG in the event that litigation is pursued by a third party against all Parties to this MOU challenging the County's environmental approval for the Project. However, the City's indemnification responsibilities shall only extend to the payment of legal fees, costs, and other expenses incurred for joint representation of all Parties; in other words, the City shall indemnify SPON and AWG to the extent that the County, City, SPON and AWG are represented jointly by a single law firm selected by the County in accordance with Section 8.1. In no event shall the City be responsible for indemnifying SPON and/or AWG if: (i) AWG and/or SPON elect to pursue retention of individual legal counsel; or (ii) a conflict arises between the County, City, SPON and/or AWG, thereby necessitating the retention of separate counsel for SPON and/or AWG. In either case, the City shall not be

responsible for indemnifying AWG and/or SPON and the City's indemnification responsibilities shall extend solely to the County in accordance with Section 8.1.

8.3 The City, SPON and AWG waive any right to pursue litigation against the County and/or the City, or one another, arising from any set of facts, circumstances, or actions related to this MOU and the CEQA Documents prepared under the MOU. The Parties also agree that the Proposed Amended Stipulation shall include a provision that specifically includes a waiver of any right to pursue litigation arising from any set of facts, circumstances, or actions related to the Project/Proposed Amended Stipulation.

8.4 The Parties expressly agree that the City's, SPON's and AWG's obligations, waivers and commitments set forth in Sections 8.1, 8.2 and 8.3 shall have no force and effect until the City approves and executes an Amended Stipulation. In the event that the City fails to execute an Amended Stipulation: (i) the City shall have no obligation to indemnify and defend the County, SPON or AWG pursuant to Sections 8.1 and 8.2; and, (ii) the City, SPON, and AWG will retain the ability to pursue litigation against the County contrary to the requirements of Section 8.3.

8.5 In any litigation contemplated pursuant to Sections 8.1 and 8.2, the County agrees to make reasonable efforts to select a law firm that, absent a conflict of interest that would prohibit joint representation, will represent the Parties named in the lawsuit.

8.6 Within five calendar days of receipt, any party hereto shall provide written notification to the other Parties of receipt of any claims, administrative actions, or legal actions with respect to any of the matters described in this MOU, including but not limited to the adequacy of the CEQA Documents. At that time and absent the existence of a conflict of interest, the Parties shall establish procedures for the sharing of information and cooperate in the defense of such actions brought by any third parties with respect to any of the matters covered in this MOU.

9.0 Termination.

9.1 In the event that a party fails or refuses to perform any of the provisions of this MOU at the time and in the manner required, that party shall be deemed in default in the performance of this MOU. If such default is not cured within a period of fifteen (15) calendar days, or if more than fifteen (15) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within fifteen (15) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the MOU by giving to the defaulting party written notice thereof.

9.2 The County will provide in its contracts with any Consultants or other professionals retained to assist in the preparation of the CEQA Documents a provision which allows the County to terminate, without cause, any obligations for payment of work not performed as of the date the termination notice is received by the Consultant. However, no notice of termination will relieve either the County or City of its obligations under Section 4.2 of

this MOU in respect to work performed prior to the effective date of notice of termination issued by the City or County.

10.0 Notices. Notices of all meetings related to the MOU, any copies of documents prepared pursuant to this MOU, and any other notices permitted by this MOU shall be given as follows:

10.1 To the City of Newport Beach:

David Kiff
City Manager
3300 Newport Boulevard
Newport Beach, California 92663
Telephone: (949) 644-3000
Facsimile: (949) 644-3020
Email: dkiff@newportbeachca.gov

and

Aaron Harp
City Attorney
3300 Newport Boulevard
Newport Beach, California 92663
Telephone: (949) 644-3131
Facsimile: (949) 644-3139
Email: aharp@city.newport-beach.ca.us

10.2 To the County of Orange

Alan Murphy
Airport Director
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626
Telephone: (949) 252-5183
Facsimile: (949) 252-5178
Email: amurphy@ocair.com

and

Lori Ballance
Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, California 92009
Telephone: (760) 431-9501
Facsimile: (760) 431-9512
Email: lbalance@gdandb.com

and

Paul Albarian
Deputy County Counsel
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626
Telephone: (949) 252-5280
Facsimile: (949) 252-5044
Email: palbarian@ocair.com

10.3 To the Airport Working Group:

Barbara Lichman
Buchalter Nemer
18400 Von Karman Avenue
Suite 800
Irvine, California 92612
Telephone: (949) 224-6292
Facsimile: (949) 720-0182
Email: bllichman@buchalter.com

10.4 To Stop Polluting Our Newport:

Jean Watt
4 Harbor Island
Newport Beach, California 92660
Telephone: (949) 673-8164
Email: jwatt4@aol.com

and

Steven M. Taber
Taber Law Group PC
P.O. Box 60036
Irvine, California 92602
Telephone: (949) 735-8217
Facsimile: (714) 707-4282
Email: staber@taberlaw.com

11.0 General Provisions.

11.1 *Entire Agreement – No Implied Warranties or Guarantees.*

This MOU contains the entire agreement of the Parties in regards to this MOU and supersedes all discussions, agreements or representations made by any party prior to

execution of this MOU by the Parties. Except as expressly and explicitly provided in this MOU, the Parties have not made any warranties or guarantees in respect of any manner addressed in, or related to, this MOU. The Parties also hereto acknowledge and agree that the recitals set forth above are true and correct and incorporated into the operative requirements of this MOU.

11.2 *No Third Party Beneficiaries.*

The Parties shall not be responsible for the acts or omissions of the other. No party shall have the authority to speak for, represent, or obligate another party in any way without the prior written authority from such other party. No person or entity that is not a party to this MOU may claim any rights in this MOU as a third party beneficiary, or otherwise.

11.3 *Amendment/Signatures/Further Acts.*

The terms of this MOU shall not be modified in any way except by a writing signed by the Parties. This MOU may be executed in counterparts, and shall be effective as a complete agreement upon being executed by all signatories, notwithstanding that all signatures may not appear in a single document. The Parties will execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this MOU.

In the event that the Project, as that term is defined in Section 1.7, *supra*, is substantially modified – as mutually decided by the Parties – prior to execution of the Proposed Amended Stipulation, the Parties shall meet and confer, and assess whether to modify the terms of the MOU. While the amendment process is pending, the terms of Section 4.2, *supra*, shall be temporarily suspended, but shall be re-imposed if an amended MOU is executed by the Parties.

11.4 *Controlling Law and Venue.*

The laws of the State of California shall govern this MOU and all matters relating to it and any action brought relating to this MOU shall be adjudicated in a court of competent jurisdiction in the County of Orange.

11.5 *Severability.*

If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

WHEREFORE, the County, the City, AWG and SPON approve this MOU as indicated by the signatures of their authorized representatives below.


COUNTY OF ORANGE


_____, Chair of the Board of Supervisors



FACSIMILE SIGNATURE AUTHORIZED
PER G.C. SEC. 25103, RESO 79-1535
SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD

ATTEST:



SUSAN NOVAK
CLERK OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

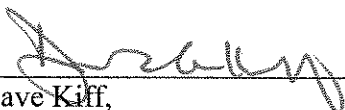
APPROVED AS TO FORM:



Paul Albarian, Deputy County Counsel

CITY OF NEWPORT BEACH,

A Municipal Corporation



Dave Kiff,
City Manager for the City of Newport Beach

ATTEST:



Leilani Brown, City Clerk

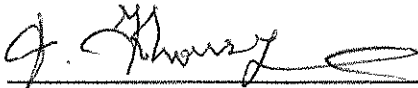
APPROVED AS TO FORM:



Aaron C. Harp, City Attorney



AIRPORT WORKING GROUP



Tony Khoury, President

APPROVED AS TO FORM:




Barbara Lichman

STOP POLLUTING OUR NEWPORT



Marko Popovich, President

APPROVED AS TO FORM:



Steven Taber

[END SIGNATURES]

AIRPORT WORKING GROUP

Tony Khoury, President

APPROVED AS TO FORM:

Barbara Lichman

STOP POLLUTING OUR NEWPORT

Marko Popovich
Marko Popovich, President

APPROVED AS TO FORM:

Steven M. Taber
Steven Taber

[END SIGNATURES]

Exhibit A

1. To modify some existing restrictions on aircraft operations at John Wayne Airport in order to provide increased air transportation opportunities to the air traveling public using the Airport without adversely affecting aircraft safety, recognizing that aviation noise management is crucial to continued increases in JWA's capacity.
2. To reasonably protect the environmental interests and concerns of persons residing in the vicinity of the JWA, including their concerns regarding "quality of life" issues arising from the operation of JWA, including but not limited noise and traffic.
3. To preserve, protect and continue to implement the important restrictions established by the 1985 Settlement Agreement, which were "grandfathered" under the Airport Noise and Capacity Act of 1990 and reflect and accommodate historical policy decisions of the Orange County Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport.
4. To provide a reasonable level of certainty to: surrounding local communities; airport users (particularly scheduled commercial users); and the air traveling public regarding the level of permitted aviation activity at JWA for a defined future period of time.
5. To consider revisions to the regulatory operational restrictions at JWA in light of the current aviation environment, the current needs of the affected communities, and industry interests represented at JWA.

Exhibit B

Principal Restrictions	Proposed Project	Alternative A	Alternative B	Alternative C
Term	Through December 31, 2030	Through December 31, 2030	Through December 31, 2030	Not Applicable
Curfew	Through December 31, 2035	Through December 31, 2035	Through December 31, 2035	Through December 31, 2020
Annual Passenger Limit (number of million annual passengers [MAP])				
1/1/2016-12/31/2020	10.8 MAP	10.8 MAP	10.8 MAP	16.9 MAP
1/1/2021-12/31/2025	11.8 MAP	11.4 MAP	13.0 MAP	16.9 MAP
1/1/2026-12/31/2030	12.2 or 12.5 MAP*	12.8 MAP	15.0 MAP	16.9 MAP
Passenger Flights (number of Class A ADDs for passenger service)				
1/1/2016-12/31/2020	85 Class A ADDs	107 Class A ADDs (+22)	100 Class A ADDs (+15)	228 Class A ADDs (+143)
1/1/2021-12/31/2025	95 Class A ADDs (+10)	120 Class A ADDs (+13)	110 Class A ADDs (+10)	228 Class A ADDs (+0)
1/1/2026-12/31/2030	95 Class A ADDs	135 Class A ADDs (+15)	115 Class A ADDs (+5)	228 Class A ADDs (+0)
Cargo Flights (number of Class A ADDs for all-cargo service)				
1/1/2016-12/31/2030	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs
Passenger Loading Bridges				
1/1/2016-12/31/2020	20	20	20	No Limit
1/1/2021-12/31/2030	No Limit	No Limit	No Limit	No Limit
Table Notes:				
Alternative A was delineated based on information contained in the FAA's "APO Terminal Area Forecast Detail Report" (dated January 2013).				
Alternative B was delineated based on input from JWA's commercial air service providers.				
Alternative C was delineated based on the physical capacity of JWA's airfield.				
* Trigger for capacity increase to 12.5 MAP: air carriers must be within 5 percent of 11.8 MAP (i.e., 11.21 MAP) in any one year during the January 1, 2021 through December 31, 2025 time frame.				

ORANGE COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

April 16, 2013

Submitting Agency/Department: JOHN WAYNE AIRPORT

Approve Memorandum of Understanding with City of Newport Beach, Airport Working Group and Stop Polluting Our Newport for funding and preparation of Environmental Impact Report; and make California Environmental Quality Act findings - District 2

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED ☒ OTHER ☐

Unanimous ☒ (1) NGUYEN: Y (2) MOORLACH: Y (3) SPITZER: Y (4) NELSON: Y (5) BATES: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- ☐ Resolution(s)
- ☐ Ordinances(s)
- ☒ Contract(s)

Item No. 23

Special Notes:

Copies sent to: JWA/Alan Murphy
JWA/Airport Commission

4-24-13



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Orange County, State of California.
Susan Novak, Clerk of the Board

By: [Signature]
Deputy



AGENDA STAFF REPORT

APR -1 4:11:42

ASR Control 13-000400

MEETING DATE: 04/16/13
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport (Approved)
DEPARTMENT CONTACT PERSON(S): Alan L. Murphy (949) 252-5183

18A1

SUBJECT: JWA Settlement Agreement - Proposed MOU Regarding Preparation of an EIR

CEO CONCUR
Concur

COUNTY COUNSEL REVIEW
Approved Agreement to Form

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: May 22, 2001, Item S56B, Approve MOU with Newport Beach for funding and preparation of environmental documentation.

RECOMMENDED ACTION(S):

1. Find that the subject activity is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to review under CEQA.
2. Approve and authorize the Chair of the Board of Supervisors to execute the attached Memorandum of Understanding regarding the preparation of an Environmental Impact Report.

SUMMARY:

Authorize approval and execution of a Memorandum of Understanding (MOU) between the City of Newport Beach (City), Airport Working Group (AWG), and Stop Polluting Our Newport (SPON) for funding and preparation of an Environmental Impact Report (EIR).

BACKGROUND INFORMATION:

On December 13, 1985, the County of Orange, City of Newport Beach (City), Airport Working Group of Orange County (AWG) and Stop Polluting Our Newport (SPON) (the signators or settling parties) filed a

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Stipulation for Entry of Final Judgment by Certain Settling Parties with the United States District Court, Central District of California, in the *County of Orange v. Air California, et al.* litigation. The overriding purposes of the 1985 Stipulation were to: (i) find the Environmental Impact Report 508/Environmental Impact Statement legally adequate under the California Environmental Quality Act, the National Environmental Policy Act and all implementing regulations; and (ii) provide for the enforcement of certain provisions in the 1985 Stipulation relating to the development and operation of John Wayne Airport, Orange County (JWA) through December 31, 2005. The 1985 Stipulation included an anti-litigation provision and an agreement that the City and County would jointly defend EIR 508/EIS. On December 18, 1985, the Court entered a final judgment in the action, confirming the stipulation of the settling parties. This stipulation is what has commonly become known as the "1985 Settlement Agreement."

In August 1990, consistent with all of the relevant Board actions, including the 1985 Settlement Agreement, the Board approved and adopted the Phase 2 Commercial Airline Access Plan and Regulation (Phase 2 Access Plan) to govern the operation of JWA during the period from 1990 through 2005.

In 2003, the original four signators approved a series of amendments to the 1985 Settlement Agreement that allowed for additional facilities and operational capacity and continued to provide environmental protections for the local community for an additional 10 years (through December 31, 2015). The 2003 amendments to the Settlement Agreement were implemented through amendments to the Phase 2 Access Plan and the term of the Access Plan was also extended through 2015.

Beginning in early 2012, the settling parties began negotiating a possible extension of the 1985 Settlement Agreement beyond its current expiration in 2015 in order to, once again, continue the County's historical protection of the environmental interests and concerns of the community while providing capacity increases at JWA. The City, AWG and SPON have proposed an agreement that defines key provisions for possible future amendments to the 1985 Settlement Agreement. Key provisions of the Amended Stipulation proposed by the City, AWG and SPON are as follows:

Term: The term between the parties would be extended to December 31, 2030.

Curfew: The existing curfew regulations and hours of operation for JWA would remain in effect until at least December 31, 2035.

MAP Limitation: Until December 31, 2020, JWA could serve no more than 10.8 Million Annual Passengers (MAP) in any Plan Year. Beginning January 1, 2021 through December 31, 2025, JWA could serve no more than 11.8 MAP. If JWA serves more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA could serve no more than 12.5 MAP. If JWA serves no more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA could serve no more than 12.2 MAP.

Regulated Average Daily Departure (ADD) Limitation: Until December 31, 2020, there would be a maximum of 85 Commercial Air Carrier Class A ADDs and 4 Commercial Cargo Air Carrier Class A ADDs serving JWA for a combined total maximum of 89 Class A ADDs. (A maximum of 2 of the 4 Commercial Cargo Class A ADDs could be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than 4 ADDS). Beginning January 1, 2021 through December 31, 2030, there would be a maximum of 95 Commercial Air Carrier Class A ADDs and 4 Commercial Cargo Air

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Carrier Class A ADDs serving JWA for a combined total maximum of 99 Class A ADDs. (A maximum of 2 of the 4 Commercial Cargo Class A ADDs may be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than 4 ADDS).

Commercial Loading Bridge Limitation: Until December 31, 2020, there would be a maximum of 20 loading bridges at JWA. Beginning January 1, 2021 there would be no loading bridge limitations.

In addition to the agreement proposed by the City, AWG and SPON, three project alternatives as well as the CEQA mandated "no project" alternative will be considered and analyzed in the EIR to the same level of detail as the proposed agreement.

The purpose of the MOU is to allow the parties to enter into a cooperative agreement that defines: (i) the roles and responsibilities of each party in assessing the environmental impacts of the Proposed Project and its alternatives; (ii) the procedures and protocols the parties agree to follow with respect to the County's preparation of an Environmental Impact Report (EIR) pursuant to the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.) and State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.; (iii) the funding mechanism for CEQA document preparation that would ultimately support the possible amendment and extension of the 1985 Settlement Agreement; and (iv) the litigation defense and indemnification responsibilities and a waiver of litigation by the parties to the MOU.

As the proprietor of JWA, the County will act as "lead agency" and the City will be a "responsible agency" in the preparation of the CEQA Documents contemplated by the MOU for the Project. As provided in the MOU, the County will consult with, and consider input from the City, AWG and SPON on issues related to the preparation of the CEQA Documents. However, the County will have the ultimate and final responsibility for the preparation of the CEQA Documents and any related management of, and directions to, any consultants assisting in the preparation of those documents.

The cost of all work (including all fees, charges and costs) performed by the Consultants, other than attorneys, on the CEQA Documents will be the equal responsibility of the City and County. Each party to the MOU will be responsible for all costs and expenses related to work performed by its own employees, attorneys or professionals.

In the event litigation is initiated against any one of the parties to the MOU on any matter related to the MOU or its implementation that is associated with an Amended Stipulation that has been approved by City, including, but not limited to, the defense of an action challenging any procedural or substantive aspect of the County's environmental process and subsequent approvals, the City will be required to reimburse the County for any customary and reasonable fees, costs, or other expenses incurred by the County in the defense of any such action. In the event that litigation is initiated, the County, after consultation with the City, will have the right to retain legal counsel of its absolute choosing, subject to the caveat that such legal counsel's fees, costs and other expenses shall be customary and reasonable for the type of service(s) provided. The City must indemnify the County until all legal proceedings have been concluded, and this obligation continues even if the County's approvals are not validated in the judicial proceeding(s).

The parties also agree to waive any right to pursue litigation against the County and/or the City, or one another, arising from any set of facts, circumstances, or actions related to this MOU and the CEQA Documents prepared under the MOU that are associated with an Amended Stipulation that has been

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approved by City. The parties also agree that the Proposed Amended Stipulation will include a provision that specifically includes a waiver of any right to pursue litigation arising from any set of facts, circumstances, or actions related to the Project/Proposed Amended Stipulation.

The approval and execution of the MOU by the County is not to be construed as an "approval" of the Project, as that term is defined for purposes of CEQA. As indicated above, and despite the possible execution and approval of the MOU, the County is retaining the full discretion to adopt an alternative, impose mitigation measures, or disapprove the Project altogether once the requisite CEQA review is completed.

CEQA COMPLIANCE:

This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore exempt from CEQA since it will not result in any direct or indirect physical change in the environment and does not involve an irrevocable commitment of resources by the County to the activity since this is a proposed MOU regarding preparation of an EIR. It is therefore exempt from CEQA. Any future action that constitutes a project will be reviewed for compliance with CEQA.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A: Memorandum of Understanding Regarding Preparation of an Environmental Impact Report



CITY OF

NEWPORT BEACH

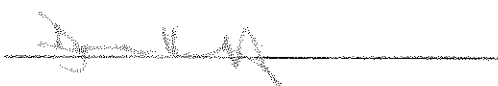
City Council Staff Report

Agenda Item No. 18
March 26, 2013

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: City Manager's Office
Dave Kiff, City Manager
949-644-3001, dkiff@newportbeachca.gov

PREPARED BY: Dave Kiff, City Manager

APPROVED: 

TITLE: Memorandum of Understanding (MOU): John Wayne Airport

ABSTRACT:

City Council Policy A-17 (Attachment B) provides that the City Council's primary objective is to protect residents from the impacts of commercial aircraft operations at and from John Wayne Airport ("JWA"). In 1985, the County of Orange ("County"), the City of Newport Beach ("City"), the Airport Working Group ("AWG"), and Stop Polluting Our Newport ("SPON") (collectively, "Parties") entered into a Settlement Agreement to resolve litigation related to JWA. Over the years, the Settlement Agreement has been amended by the Parties to adjust the terms and protect the interests of our community.

Because the Settlement Agreement is set to expire on December 31, 2015, the Parties have been meeting in 2011 and 2012 to negotiate a possible extension of the Settlement Agreement. Out of these discussions, the Parties have agreed on a proposed project which, among other things, proposes to maintain the current restrictions on JWA through December 31, 2020, with reasonable increases in the number of passengers served and "Class A" departures from JWA going into effect thereafter ("Proposed Project").

The attached Memorandum of Understanding ("MOU") is the first step towards amending and extending the Settlement Agreement and provides for the preparation of an Environmental Impact Report ("EIR"), as required by the California Environmental Quality Act ("CEQA"), which will analyze the Proposed Project, as well as alternative projects.

RECOMMENDATION:

Authorize the Mayor and City Clerk to execute the attached MOU regarding preparation of an EIR for JWA.

FUNDING REQUIREMENTS:

The City's adopted FY 2012-13 Budget has resources designated to assist in the funding of the environmental review associated with this MOU.

DISCUSSION:

The 1985 Settlement Agreement required the County, for a period of 20 years, to limit the size and scope of terminal facilities, limit the number of daily departures by the noisiest aircraft and cap the number of passengers served each year at JWA. In 2003, the Parties extended the term of the Settlement Agreement and provided for a limitation on the number of passengers served, the number of aircraft loading bridges and the maximum number of noise-regulated departures. The 2003 Amendments were accompanied by a letter from the Federal Aviation Administration ("FAA") confirming that the amendments were consistent with the Airport Noise and Capacity Act ("ANCA"). The FAA letter confirming the validity of the 2003 Amendments was important because it established a precedent for future extensions of the Settlement Agreement. The Settlement Agreement is currently scheduled to expire on December 31, 2015.

The purpose of the MOU is to allow the Parties to define procedures and protocols they agree to follow with respect to the preparation of an EIR necessary for the parties to amend the Settlement Agreement. The EIR will study, among other things, the Proposed Project which includes the following:

(1) Curfew. An extension of the County Board of Supervisor's commitment to not change the existing curfew regulations and hours for JWA until at least December 31, 2035.

(2) Term. An extension and modification of certain loading bridge, passenger and flight limits until at least December 31, 2030 (see below).

(3) Limitation of Passengers Served. A limit on the number of passengers served as follows:

- (a) Until December 31, 2020, no more than 10.8 Million Annual Passengers ("MAP") (the same limits in place today);
- (b) From January 1, 2021 through December 31, 2025, no more than 11.8 MAP; and

- (c) From January 1, 2026 through December 31, 2030, the MAP would be determined as follows: (i) if JWA serves more than 11.21 MAP in any calendar year from January 1, 2021 through December 31, 2025, then the MAP would be 12.5 MAP; or (ii) if JWA serves no more than 11.21 MAP in any calendar year from January 1, 2021 through December 31, 2025, then the MAP would be 12.2 MAP.

(4) Limitation on the Number of "Class A" Average Daily Departures. A limit on the number of "Class A" departures (generally, the loudest commercial flights) from JWA (i.e. Average Daily Departures or "ADDs") as follows:

- (a) Until December 31, 2020, a maximum of 85 Commercial Air Carrier Class A ADDs and 4 Commercial Cargo Air Carrier Class A ADDs for a combined total maximum of 89 Class A ADDs (the same limits in place today); and
- (b) Beginning January 1, 2021 through December 31, 2030, a maximum of 95 Commercial Air Carrier Class A ADDs and 4 Commercial Cargo Air Carrier Class A ADDs for a combined total maximum of 99 Class A ADDs.

(5) Loading Bridges. The current cap of twenty (20) loading bridges would be maintained through December 31, 2020, after which the limitation would end. Note: there is no current limit on the numbers of gates at JWA. The 2003 Extension refers not to gates but to loading bridges, with a cap of twenty (20).

As noted in the MOU, the burden of preparing the EIR will be on the County because it will be the lead agency, whereas the City is a responsible agency for purposes of CEQA. The MOU also requires the City to assume certain obligations including, but not limited to: (1) equally sharing the costs of preparing the EIR with the County, with an initial \$100,000 deposit; (2) meeting with representatives of the County, AWG and SPON on a weekly basis to help with the preparation of the EIR; and (3) if the amendment to the Settlement Agreement is executed and a legal challenge filed, taking on certain obligations to defend and indemnify Parties to the MOU. If the City Council approves the MOU, this will be an important first step to the eventual amendment of the Settlement Agreement, which amendment will still need to be approved by all Parties and the Court after the EIR is certified.

Council Policy A-17. The Newport Beach City Council Airport Policy (Council Policy A-17) is eleven pages plus a version of the stipulation filed with the US District Court that embodies the 2002/2003 Extension to the 1985 Settlement Agreement. The policy states that the City Council's "primary objective" is to protect Newport Beach residents from the adverse impacts of commercial aircraft operations. It also notes that any

strategies and plans developed by the City must “consider and respect the complex legal, political, and economic factors relevant to airport operations and impacts.” This includes State and Federal law, the Federal Aviation Administration (FAA), regional demand for air transportation, and more.

The City believes that the Proposed Project is consistent with the Policy and the “complex” factors associated with living adjacent to a major airport like JWA.

2006 Cooperative Agreement. The Proposed Project does not address nor impact the 2006 Cooperative Agreement between the City of Newport Beach and the County of Orange as to growth of JWA. The Cooperative Agreement has no termination date. Among other things, the Agreement requires the County to seek the approval of the City of Newport Beach if the County ever desires to acquire property to enable the expansion of the current commercial air carrier runway or to add a second commercial air carrier runway. These protections are of critical importance to the community, and again will remain in place notwithstanding the changes to the 2003 Extension to the 1985 Settlement Agreement.

Concluding Notes. As the Proposed Project enters a greater public review phase associated with the environmental analysis, the staff at the City wish to express our sincere thanks to the various parties involved in the negotiations to this point. These include working groups from the City Council, SPON, AWG, and representatives of JWA and Supervisor John Moorlach’s office (including the supervisor himself).

Earlier this week, representatives of the FAA advised that, after completing an informal and cursory review of the proposal preferred by the City, AWG and SPON, they do not see any impediments to moving forward with the environmental review process at this time. After completion of the CEQA process and prior to the final approval of any extension of the Settlement Agreement, however, the City expects the County to correspond further with the FAA.

As noted, the County will be the lead agency for the EIR. CEQA requires that the lead agency not “pre-judge” the analysis and that the lead agency’s decision maker, the Orange County Board of Supervisors in this case, not make any determination as to which project will or should be adopted until the completion of the analysis and public comment processes.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find the approval of the attached MOU is not subject to CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines,

California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

Submitted by:

De Vries

Dave Kiff
City Manager

Attachments: A - Memorandum of Understanding and attachments
B - Council Policy A-17 (first 11 pages)

**Memorandum of Understanding
Regarding Preparation
Of An
Environmental Impact Report**

The County of Orange ("County"), as the owner and operator of John Wayne Airport ("JWA"), the City of Newport Beach, a charter city and municipal corporation ("City"), Stop Polluting Our Newport Corporation, a California tax exempt corporation ("SPON"), and the Airport Working Group of Orange County, Inc., a California tax exempt corporation ("AWG") (each individually referred to as a "party," collectively referred to herein as the "Parties") have entered into this Memorandum of Understanding ("MOU") effective _____, 2013.

The purpose of this MOU is to allow the Parties to define procedures and protocols they agree to follow with respect to the preparation of an Environmental Impact Report ("EIR") pursuant to the requirements of the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §21000 et seq.) and State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.), which will study the environmental implications of the Project, as defined in Section 1.7, *infra*. The Project, in part, would constitute the second extension of the stipulation that settled litigation in *County of Orange v. Air California, et al.* (U.S.D.C., C.D. Cal., Case No.CV-85-1542 TJH (Mcx) (1985)) ("Action") and imposed certain restrictions on the development and operation of JWA. The MOU is made, in part, in light of the following recitals:

1.0 RECITALS

1.1 In November 1985, the Parties, by their respective counsel of record, entered into a stipulation to settle the Action between the Parties concerning the proposed expansion of JWA ("the 1985 Settlement Agreement"). On December 15, 1985, the United States District Court entered a final judgment pursuant to the 1985 Settlement Agreement settling the Action ("Judgment"). Under the terms of the 1985 Settlement Agreement, the Court retained jurisdiction to enforce the terms of the 1985 Settlement Agreement.

1.2 On May 22, 2001, the County Board of Supervisors ("Board") approved a Memorandum of Understanding between the County and City pursuant to which the County would act as lead agency for the preparation of an EIR that would support the amendment and extension of the 1985 Settlement Agreement.

1.3 After substantial negotiations between the Parties, the results of which were evaluated in a certified EIR, the Parties executed a stipulation in February 2003 to modify the Judgment ("2003 Amended Stipulation"). The term of the 2003 Amended Stipulation is through December 31, 2015. Notwithstanding the foregoing, however, the Parties agree that none of the operational or facility limits contained in the 2003 Amended Stipulation will expire at the end of the 2003 Amended Stipulation's term, absent affirmative action by the Board to alter those limits that is taken in accordance with CEQA and other applicable laws.

1.4 On or about February 25, 2003, the United States District Court accepted the 2003 Amended Stipulation and modified the Judgment to conform to the terms contained in the 2003 Amended Stipulation ("Modified Judgment"). The Modified Judgment allows for, in part: (1) a maximum of 85 Class A Average Daily Departures ("ADDs") for passenger commercial air carrier service; (2) a maximum of four Class A ADDs for commercial cargo service; (3) 10.8 million annual passengers ("MAP"); and (4) 20 passenger loading bridges. (See 2003 Amended Stipulation, ¶¶39-41. Relatedly, the definitional provisions provided in the 2003 Amended Stipulation at ¶¶18-35 govern the interpretation of this MOU, to the extent applicable.)

1.5 The Modified Judgment constituted "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990" (49 U.S.C. § 47524), and was found by the Federal Aviation Administration ("FAA") in 2003 to "not reduce or limit aircraft operations or affect aircraft safety." Therefore, the 2003 Amended Stipulation and Modified Judgment were "grandfathered" under the Airport Noise and Capacity Act of 1990.

1.6 The Parties are presently discussing the possibility of further extending and amending the terms of the 1985 Settlement Agreement, as modified by the 2003 Amended Stipulation. For purposes of this MOU, this proposal is referred to as the "Proposed Amended Stipulation." To permit the Parties to fully consider the Proposed Amended Stipulation, evaluate the environmental consequences, if any, and benefits of the Proposed Amended Stipulation, and to facilitate the ability of other interested parties, including airport users and other affected communities, to provide input, the Parties have agreed to work cooperatively in the preparation of the appropriate CEQA documentation. The Parties do not anticipate the need for "major federal action" to implement the Proposed Amended Stipulation; therefore, the Parties do not believe that any federal agency will be required to prepare an environmental analysis under the National Environmental Policy Act of 1969, as amended ("NEPA").

1.7 For purposes of CEQA, the proposed "Project" is the Proposed Amended Stipulation. More specifically, the Project that shall be studied in the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by Section 5.0, *infra*, is as follows:

A. Term: The term of the Proposed Amended Stipulation between the Parties shall be extended to December 31, 2030. All Parties acknowledge and agree that the inclusion of a "term" shall in no way limit the ability of the Parties to enter into a subsequent stipulation to amend/modify the Judgment and that the inclusion of a "term" does not result in the automatic termination of the curfew at the end of the "term."

B. Curfew: The existing curfew regulations and hours of operation for JWA, as contained in Sections 2-1-30.1 through 2-1-39 of the County's Codified Ordinances and paragraph 4 at page 62 of Board Resolution 85-255 (February 26, 1985), shall remain in effect until at least December 31, 2035.

C. MAP Limitation: Until December 31, 2020, JWA shall serve no more than 10.8 MAP in any Plan Year (see 2003 Amended Stipulation, ¶¶29-30). Beginning January 1, 2021 through December 31, 2025, JWA shall serve no more than 11.8 MAP. If JWA serves more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA shall serve no

more than 12.5 MAP. If JWA serves no more than 11.21 MAP in any Plan Year from January 1, 2021 through December 31, 2025, beginning January 1, 2026 through December 31, 2030, JWA shall serve no more than 12.2 MAP.

D. Regulated ADD Limitation: Until December 31, 2020, there shall be a maximum of eighty-five (85) Commercial Air Carrier Class A ADDs and four (4) Commercial Cargo Air Carrier Class A ADDs serving JWA for a combined total maximum of eighty-nine (89) Class A ADDs. (A maximum of two (2) of the (4) Commercial Cargo Class A ADDs may be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than four (4) ADDS). Beginning January 1, 2021 through December 31, 2030, there shall be a maximum of ninety-five (95) Commercial Air Carrier Class A ADDs and four (4) Commercial Cargo Air Carrier Class A ADDs serving JWA for a combined total maximum of ninety-nine (99) Class A ADDs. (A maximum of two (2) of the (4) Commercial Cargo Class A ADDs may be allocated by the County to Commercial Air Carriers for any Plan Year in which the demand for such flights by Commercial Cargo Air Carriers is less than four (4) ADDS).

E. Passenger Loading Bridges: Until December 31, 2020, there shall be a maximum of twenty (20) passenger loading bridges at JWA. Beginning January 1, 2021 through December 31, 2030, there shall be no limit on the number of passenger loading bridges at JWA.

The objectives of the Project are enumerated in “Exhibit A” to this MOU. Additionally, at a minimum, the alternatives to the Project outlined in the attached “Exhibit B” to this MOU, as well as the CEQA-mandated “no project” alternative, shall be considered and analyzed in the EIR to an equal level of detail as the Project. In accordance with the discretion afforded to the County under CEQA, the County is free to consider other alternatives and mitigation measures that feasibly avoid, mitigate, or minimize the Project’s significant environmental impacts, if any.

1.8 The CEQA Guidelines authorize the City and County to enter into a cooperative agreement, such as this MOU, to define the roles and responsibilities of each agency in assessing the environmental impacts of the Project.

1.9 The Parties cannot presently predict the precise period of time which will be required to prepare, consider and circulate the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by this MOU. However, the Parties acknowledge that it is an objective of all Parties to proceed expeditiously to consideration of the Project by the Newport Beach City Council and by the County’s, AWG’s, and SPON’s respective Boards, and the Parties acknowledge their mutual intent to use their respective best efforts to proceed expeditiously with the preparation of CEQA Documents that meet all of the procedural and substantive requirements of CEQA.

1.10 The execution of this MOU by the County is not to be construed as an “approval” of the Project, as that term is defined for purposes of CEQA. As indicated above, and despite the execution of this MOU, the County is retaining the full discretion to adopt an alternative, impose

mitigation measures, or disapprove the Project altogether once the requisite CEQA review is completed. Again, the fundamental purpose of this MOU is to define the Project to be subject to review based upon a mutually agreeable project description, and to provide the procedures and mechanisms by which CEQA review for the Project will be conducted; at all times, such review efforts shall comply with all applicable CEQA mandates.

NOW, THEREFORE, the Parties agree as follows:

2.0 Parties' Roles. As the proprietor of JWA, the County will act as "lead agency" and the City will be a "responsible agency" in the preparation of the CEQA Documents (as that term is defined in Section 5.1, *infra*) contemplated by this MOU for the Project. As provided in this MOU, the County will consult with, and consider input from the City, SPON and AWG on issues related to the preparation of the CEQA Documents. However, the County will have the ultimate and final responsibility for the preparation of the CEQA Documents and any related management of, and directions to any consultants assisting in the preparation of the CEQA Documents as described further in Section 5.2, *infra*.

3.0 Representatives. The Parties have each designated Representatives (who are the names listed in Sections 10.1-10.4, *infra*) to act on their behalf in performing the duties required by this MOU ("Designated Representatives").

4.0 Consultants.

4.1 Retention of Consultants.

The County may retain experts, professionals, consultants, and subconsultants ("Consultant(s)"), to provide information, in the form of studies, reports and analysis, or otherwise assist in the preparation of the CEQA Documents (as that term is defined in Section 5.1, *infra*). Each Consultant shall be bound by a scope of work prepared by the County, after consultation with the Designated Representatives. The County will select the Consultant(s) to assist in the preparation of the CEQA Documents to the extent it deems such action necessary or desirable, after consultation with the Designated Representatives. Any final decision regarding the identity of Consultant(s) selected, and the terms of the scope of work for each such Consultant, will be within the sole discretion of the County.

4.2 Payment of Preparation Costs for CEQA Documents.

4.2.1 The cost of all work (including all fees, charges and costs) performed and work product produced by the Consultants, other than attorneys, on the CEQA Documents (as that term is defined in Section 5.1, *infra*) shall be the equal responsibility of the City and County. Within ten (10) days after approval of this MOU by the Parties, the City will deposit the sum of \$100,000.00 to a segregated account with JWA. JWA will withdraw amounts equal to fifty percent (50%) of the costs for the CEQA Documents from the segregated account as payments are made. JWA will provide a statement to the City every thirty (30) days thereafter of amounts withdrawn from the segregated account, showing charges made during the preceding monthly period and the fifty percent (50%) withdrawn from the account, and the City will, within ten (10)

days, replenish the deposit account by whatever amount is necessary to return the account to a credit balance of \$100,000.00. Upon certification of the EIR, or upon termination of this MOU under Section 9.0, and the payment of all outstanding obligations incurred by the County, the balance of funds on deposit shall be refunded to the City. Only the cost of work performed and work product produced by the Consultants to study and analyze the Project, and alternatives thereto (as defined in Section 1.7, *supra*) shall be the responsibility of the City. Each party to this MOU shall be responsible for all costs and expenses related to work performed by their own employees, attorneys or professionals that the party has retained on its own.

5.0 Document Preparation. The following principles shall apply to the preparation of the EIR and related CEQA documents:

5.1 As the lead agency, the County shall be responsible for preparing all appropriate "CEQA Documents," including, but not limited to, Initial Study(ies); Notice(s) of Preparation; Notice(s) of Availability and Completion; screencheck, draft, recirculated, and/or final EIRs, and supporting technical studies/reports; the Mitigation Monitoring and Reporting Plan; CEQA Findings; and, related environmental analysis and approval documents.

5.2 Although this MOU provides mechanisms for a collaborative approach to the analysis of the Project's environmental impacts pursuant to CEQA, neither the City, SPON or AWG has the authority or right to interfere with the County's exercise of its discretion and judgment in assessing the Project's and the alternatives' environmental impacts in the CEQA Documents.

6.0 Confidentiality. To the extent consistent with the California Public Records Act (Gov. Code, §6250 et seq.), CEQA, and any process of law, all drafts of documents including, but not limited to, draft CEQA Documents prepared under this MOU will be maintained as confidential.

Therefore, during preparation of the CEQA Documents, the Parties, and their Designated Representatives, as set forth herein, will not cause or permit pre-circulation draft materials to be provided to any person not directly responsible for some aspect of the preparation and review process for the specific CEQA Document(s) at issue, or whose review of any such materials is not necessary and appropriate to completion and consideration of the Project. Generally speaking, pre-circulation draft materials may be provided to each party's Council or Board, employees, attorneys or professionals that the party has retained or designated as a representative to the process to advance its interests, as well as the Consultants. Prior to providing any pre-circulation documents to any person who is not a Designated Representative, as provided herein, the party providing the information shall have the person execute an agreement whereby the person agrees to be bound by the confidentiality provisions set forth in this section of this MOU.

If any party to this MOU receives a Public Records Act request or other process of law requesting or demanding any such pre-circulation disclosure of draft materials, that party will immediately provide copies of any such request or process to the other Parties and promptly consult with the other Parties prior to taking any action or responding to such a request or demand.

7.0 Coordination Between the Parties. The Designated Representatives of the Parties shall conduct weekly meetings, as necessary, on a mutually agreeable day to review CEQA Documents that have been prepared, discuss issues related to those documents, report on the status of document preparation, and report on meetings with interested parties or discuss other issues related to the CEQA process/documents.

7.1 The Parties shall each use their best efforts to promptly review all documents and be prepared to discuss issues related to each document within ten (10) working days after receipt of the pre-circulation draft document(s).

7.2 The Parties shall share any non-privileged information relevant to the Project, including all studies, reports and draft environmental documents previously prepared by any party regarding JWA. In addition, each party shall, upon request, provide the other Parties with a copy of any non-privileged study, report or analysis that is reasonably related to the preparation of the CEQA Documents under this MOU. If available, the study, report or analysis shall be provided in the most convenient form for use (computer disk or e-mail) by the County or its Consultants, except that no party shall be required to incur any expense associated with converting the document to the "most convenient form."

8.0 Litigation Defense and Indemnification, and Waiver.

8.1 In the event any litigation is initiated against any one of the Parties to this MOU on any matter related to the MOU or its implementation, including, but not limited to, the defense of an action challenging any procedural or substantive aspect of the County's environmental process and subsequent approvals, the City will, within thirty (30) days of its receipt of any invoice or statement provided to it by the County, reimburse the County for any customary and reasonable fees, costs, or other expenses incurred by the County in the defense of any such action. In the event that litigation is initiated, the County shall, after consultation with the City, have the absolute right to retain legal counsel of its choosing, subject to the caveat that such legal counsel's fees, costs and other expenses shall be customary and reasonable for the type of service(s) provided. The City shall indemnify the County until all legal proceedings have been concluded, and this obligation continues even if the County's approvals are not validated in the judicial proceeding(s).

8.2 The City shall also indemnify SPON and AWG in the event that litigation is pursued by a third party against all Parties to this MOU challenging the County's environmental approval for the Project. However, the City's indemnification responsibilities shall only extend to the payment of legal fees, costs, and other expenses incurred for joint representation of all Parties; in other words, the City shall indemnify SPON and AWG to the extent that the County, City, SPON and AWG are represented jointly by a single law firm selected by the County in accordance with Section 8.1. In no event shall the City be responsible for indemnifying SPON and/or AWG if: (i) AWG and/or SPON elect to pursue retention of individual legal counsel; or (ii) a conflict arises between the County, City, SPON and/or AWG, thereby necessitating the retention of separate counsel for SPON and/or AWG. In either case, the City shall not be

responsible for indemnifying AWG and/or SPON and the City's indemnification responsibilities shall extend solely to the County in accordance with Section 8.1.

8.3 The City, SPON and AWG waive any right to pursue litigation against the County and/or the City, or one another, arising from any set of facts, circumstances, or actions related to this MOU and the CEQA Documents prepared under the MOU. The Parties also agree that the Proposed Amended Stipulation shall include a provision that specifically includes a waiver of any right to pursue litigation arising from any set of facts, circumstances, or actions related to the Project/Proposed Amended Stipulation.

8.4 The Parties expressly agree that the City's, SPON's and AWG's obligations, waivers and commitments set forth in Sections 8.1, 8.2 and 8.3 shall have no force and effect until the City approves and executes an Amended Stipulation. In the event that the City fails to execute an Amended Stipulation: (i) the City shall have no obligation to indemnify and defend the County, SPON or AWG pursuant to Sections 8.1 and 8.2; and, (ii) the City, SPON, and AWG will retain the ability to pursue litigation against the County contrary to the requirements of Section 8.3.

8.5 In any litigation contemplated pursuant to Sections 8.1 and 8.2, the County agrees to make reasonable efforts to select a law firm that, absent a conflict of interest that would prohibit joint representation, will represent the Parties named in the lawsuit.

8.6 Within five calendar days of receipt, any party hereto shall provide written notification to the other Parties of receipt of any claims, administrative actions, or legal actions with respect to any of the matters described in this MOU, including but not limited to the adequacy of the CEQA Documents. At that time and absent the existence of a conflict of interest, the Parties shall establish procedures for the sharing of information and cooperate in the defense of such actions brought by any third parties with respect to any of the matters covered in this MOU.

9.0 Termination.

9.1 In the event that a party fails or refuses to perform any of the provisions of this MOU at the time and in the manner required, that party shall be deemed in default in the performance of this MOU. If such default is not cured within a period of fifteen (15) calendar days, or if more than fifteen (15) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within fifteen (15) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the MOU by giving to the defaulting party written notice thereof.

9.2 The County will provide in its contracts with any Consultants or other professionals retained to assist in the preparation of the CEQA Documents a provision which allows the County to terminate, without cause, any obligations for payment of work not performed as of the date the termination notice is received by the Consultant. However, no notice of termination will relieve either the County or City of its obligations under Section 4.2 of

this MOU in respect to work performed prior to the effective date of notice of termination issued by the City or County.

10.0 Notices. Notices of all meetings related to the MOU, any copies of documents prepared pursuant to this MOU, and any other notices permitted by this MOU shall be provided to the individuals identified in Sections 10.1 through 10.4, *infra*. The contact information provided in Sections 10.1 through 10.4 may be updated from time to time, as necessary, without triggering the requirements of Section 11.3, *infra*, provided that the updated contact information is circulated to the representatives of each party identified below.

10.1 To the City of Newport Beach:

David Kiff
City Manager
3300 Newport Boulevard
Newport Beach, California 92663
Telephone: (949) 644-3000
Facsimile: (949) 644-3020
Email: dkiff@newportbeachca.gov

and

Aaron Harp
City Attorney
3300 Newport Boulevard
Newport Beach, California 92663
Telephone: (949) 644-3131
Facsimile: (949) 644-3139
Email: aharp@city.newport-beach.ca.us

10.2 To the County of Orange

Alan Murphy
Airport Director
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626
Telephone: (949) 252-5183
Facsimile: (949) 252-5178
Email: amurphy@ocair.com

and

Lori Ballance
Gatzke Dillon & Ballance LLP
2762 Gateway Road

Carlsbad, California 92009
Telephone: (760) 431-9501
Facsimile: (760) 431-9512
Email: lballance@gdandb.com

and

Paul Albarian
Deputy County Counsel
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626
Telephone: (949) 252-5280
Facsimile: (949) 252-5044
Email: palbarian@ocair.com

10.3 To the Airport Working Group:

Barbara Lichman
Buchalter Nemer
18400 Von Karman Avenue
Suite 800
Irvine, California 92612
Telephone: (949) 224-6292
Facsimile: (949) 720-0182
Email: bllichman@buchalter.com

10.4 To Stop Polluting Our Newport:

Jean Watt
c/o Taber Law Group PC
P.O. Box 60036
Irvine, California 92602
Telephone: (949) 673-8164
Email: jwatt4@aol.com

and

Steven M. Taber
Taber Law Group PC
P.O. Box 60036
Irvine, California 92602
Telephone: (949) 735-8217
Facsimile: (714) 707-4282
Email: staber@taberlaw.com

11.0 General Provisions.

11.1 *Entire Agreement – No Implied Warranties or Guarantees.*

This MOU contains the entire agreement of the Parties in regards to this MOU and supersedes all discussions, agreements or representations made by any party prior to execution of this MOU by the Parties. Except as expressly and explicitly provided in this MOU, the Parties have not made any warranties or guarantees in respect of any manner addressed in, or related to, this MOU. The Parties also hereto acknowledge and agree that the recitals set forth above are true and correct and incorporated into the operative requirements of this MOU.

11.2 *No Third Party Beneficiaries.*

The Parties shall not be responsible for the acts or omissions of the other. No party shall have the authority to speak for, represent, or obligate another party in any way without the prior written authority from such other party. No person or entity that is not a party to this MOU may claim any rights in this MOU as a third party beneficiary, or otherwise.

11.3 *Amendment/Signatures/Further Acts.*

The terms of this MOU shall not be modified in any way except by a writing signed by the Parties. This MOU may be executed in counterparts, and shall be effective as a complete agreement upon being executed by all signatories, notwithstanding that all signatures may not appear in a single document. The Parties will execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this MOU.

In the event that the Project, as that term is defined in Section 1.7, *supra*, is substantially modified – as mutually decided by the Parties – prior to execution of the Proposed Amended Stipulation, the Parties shall meet and confer, and assess whether to modify the terms of the MOU. While the amendment process is pending, the terms of Section 4.2, *supra*, shall be temporarily suspended, but shall be re-imposed if an amended MOU is executed by the Parties.

11.4 *Controlling Law and Venue.*

The laws of the State of California shall govern this MOU and all matters relating to it and any action brought relating to this MOU shall be adjudicated in a court of competent jurisdiction in the County of Orange.

11.5 *Severability.*

If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

WHEREFORE, the County, the City, AWG and SPON approve this MOU as indicated by the signatures of their authorized representatives below.

COUNTY OF ORANGE

_____, Chair of the Board of Supervisors

APPROVED AS TO FORM:

Paul Albarian, Deputy County Counsel

CITY OF NEWPORT BEACH,
A Municipal Corporation

Dave Kiff,
City Manager for the City of Newport Beach

ATTEST:

Leilani Brown, City Clerk

APPROVED AS TO FORM:

Aaron C. Harp, City Attorney

AIRPORT WORKING GROUP

Tony Khoury, President

APPROVED AS TO FORM:

Barbara Lichman

STOP POLLUTING OUR NEWPORT

Marko Popovich, President

APPROVED AS TO FORM:

Steven Taber

[END SIGNATURES]

Exhibit A

1. To modify some existing restrictions on aircraft operations at John Wayne Airport in order to provide increased air transportation opportunities to the air traveling public using the Airport without adversely affecting aircraft safety, recognizing that aviation noise management is crucial to continued increases in JWA's capacity.
2. To reasonably protect the environmental interests and concerns of persons residing in the vicinity of the JWA, including their concerns regarding "quality of life" issues arising from the operation of JWA, including but not limited to noise and traffic.
3. To preserve, protect and continue to implement the important restrictions established by the 1985 Settlement Agreement, which were "grandfathered" under the Airport Noise and Capacity Act of 1990 and reflect and accommodate historical policy decisions of the Orange County Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport.
4. To provide a reasonable level of certainty to: surrounding local communities; airport users (particularly scheduled commercial users); and the air traveling public regarding the level of permitted aviation activity at JWA for a defined future period of time.
5. To consider revisions to the regulatory operational restrictions at JWA in light of the current aviation environment, the current needs of the affected communities, and industry interests represented at JWA.

Exhibit B

Principal Restrictions	Proposed Project	Alternative A	Alternative B	Alternative C
Term	Through December 31, 2030	Through December 31, 2030	Through December 31, 2030	Not Applicable
Curfew	Through December 31, 2035	Through December 31, 2035	Through December 31, 2035	Through December 31, 2020
Annual Passenger Limit (number of million annual passengers [MAP])				
1/1/2016-12/31/2020	10.8 MAP	10.8 MAP	10.8 MAP	16.9 MAP
1/1/2021-12/31/2025	11.8 MAP	11.4 MAP	13.0 MAP	16.9 MAP
1/1/2026-12/31/2030	12.2 or 12.5 MAP*	12.8 MAP	15.0 MAP	16.9 MAP
Passenger Flights (number of Class A ADDs for passenger service)				
1/1/2016-12/31/2020	85 Class A ADDs	107 Class A ADDs (+22)	100 Class A ADDs (+15)	228 Class A ADDs (+143)
1/1/2021-12/31/2025	95 Class A ADDs (+10)	120 Class A ADDs (+13)	110 Class A ADDs (+10)	228 Class A ADDs (+0)
1/1/2026-12/31/2030	95 Class A ADDs	135 Class A ADDs (+15)	115 Class A ADDs (+5)	228 Class A ADDs (+0)
Cargo Flights (number of Class A ADDs for all-cargo service)				
1/1/2016-12/31/2030	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs	4 Class A ADDs
Passenger Loading Bridges				
1/1/2016-12/31/2020	20	20	20	No Limit
1/1/2021-12/31/2030	No Limit	No Limit	No Limit	No Limit
Table Notes: Alternative A was delineated based on information contained in the FAA's "APO Terminal Area Forecast Detail Report" (dated January 2013). Alternative B was delineated based on input from JWA's commercial air service providers. Alternative C was delineated based on the physical capacity of JWA's airfield. * Trigger for capacity increase to 12.5 MAP: air carriers must be within 5 percent of 11.8 MAP (i.e., 11.21 MAP) in any one year during the January 1, 2021 through December 31, 2025 time frame.				

NEWPORT BEACH CITY COUNCIL AIRPORT POLICY

A. EXECUTIVE SUMMARY

The City Council's primary objective is to protect Newport Beach residents from the impacts of commercial aircraft operations at and from John Wayne Airport (JWA). The City Council believes that the impacts related to JWA are now, and will continue to be, the most significant threat to the quality of life of Newport Beach residents. For the last 30 years, the City, and community groups concerned about adverse airport impacts, have developed and implemented strategies to control those impacts and these efforts, which have been supported by the County for the last 20 years, have made JWA one of the most "community friendly" airports in the nation.

The City and community groups have achieved some success in controlling airport impacts by understanding, and working within, the complex legal, economic and political factors that are relevant to adverse airport impacts such as the type and level of aircraft operations. The purpose of this Policy, which is admittedly long and somewhat complex, is to provide elected and appointed officials with information and guidelines that will help ensure that decisions related to JWA serve the best interests of Newport Beach residents and enable residents to better understand and provide input regarding those decisions.

Recognizing that the City has no legal ability to directly regulate JWA operations, the City Council and community groups approved (in 1985), aggressively protected (in 1990), and then extended the term (in 2002) of the JWA Settlement Agreement. The JWA Settlement Agreement is the single most important vehicle for controlling adverse airport impacts. The City Council should pursue future Settlement Agreement amendments but only if the terms and conditions of the amendments don't facilitate any airport expansion, don't modify the curfew, don't adversely impact our resident's quality of life and are in the best long-term interests of Newport Beach residents most adversely impacted by airport operations.

The City will continue to aggressively oppose any proposal or plan that could lead to development of a second air carrier runway or runway extension and any plan or proposal that could lead to any modification of the existing noise-based curfew. The City will continue to work with, and support the efforts of, community groups and other cities impacted by JWA when those efforts are consistent or compatible with the airport strategies approved by the City Council. The City will also actively support any program or proposal that would

help serve Orange County's air transportation demand at facilities other than JWA.

This Policy has been developed with input from the Citizens Aviation Committee (Aviation Committee) that was established by the City Council in 1979. Aviation Committee members have volunteered thousands of hours in developing and implementing City airport policies and strategies. The Aviation Committee is comprised of consists of residents of each Councilmanic District, many of whom are pilots or otherwise knowledgeable about airport or aviation issues, and the diversity of membership ensures relevant input from all geographic segments of the City. The City Council appreciates the good work of the Aviation Committee and will continue to rely on the Aviation Committee in developing and implementing airport policy.

B. HISTORY

Many residential communities in Newport Beach are located under or near the departure pattern of commercial, and some general aviation, aircraft operating out of JWA. The City has, since the mid-1970's, developed and implemented strategies designed to minimize the adverse impacts - such as noise and traffic - of JWA on its residents and their quality of life. The City's initial efforts focused on involvement in "route authority" proceedings conducted by the Civil Aviation Board and litigation challenging County decisions that could increase the level or frequency of aircraft noise events. However, the City and community groups concerned about JWA such as the Airport Working Group (AWG) and Stop Polluting Our Newport (SPON) re-evaluated the litigation strategy after the Board of Supervisors (Board) approved the 1985 JWA Master Plan (Master Plan) because of changes in State and Federal law as well as the factors that impact air transportation demand in Orange County and the region.

In 1985, the City, County, SPON and AWG entered into a stipulation and agreement (1985 Settlement Agreement) to resolve Federal Court litigation initiated by the County seeking judicial approval of the Master Plan. The 1985 Settlement Agreement required the Board to modify resolutions approving the Master Plan to reduce the size of the terminal and limit the number of parking spaces. The 1985 Settlement Agreement also: (a) established three "classes" of commercial aircraft (Class A, AA, and E) based on the noise generated by the aircraft (operating with known gross takeoff weights) at the departure noise monitoring stations; (b) limited the number of "average daily departures" (ADD) of Class A and AA departures before and after construction of a new terminal to 73 ADD; (c) limited the number of passengers served each year at JWA (expressed in terms of "million annual passengers" or "MAP") to 8.4 MAP after

construction of the new terminal; and (d) required the County to maintain the curfew then effect at JWA and enforce the General Aviation Noise Ordinance.

Between 1985 and 2002, the County, City, SPON and AWG each collectively agreed, on seven separate occasions, to amend the 1985 Settlement Agreement. These amendments responded, among other things, to: (a) a new FAA Advisory Circular (AC 91-53A) that established specific criteria for close-in and distant noise abatement departure procedures; (b) changes in the location and/or type of equipment used to monitor commercial air carrier noise levels on departure; (c) air cargo carrier requests for access; and (d) changes in passenger, facility and baggage security requirements brought about by the events of September 11, 2001.

In 1990, Congress adopted the Airport Noise and Capacity Act (ANCA) which, in relevant part, requires FAA "review and approval of proposed noise or access restrictions" on Stage 3 aircraft. The City and County successfully lobbied Congress to "grandfather" (exempt from the FAA "review and approval" requirements of ANCA): (a) the 1985 Settlement Agreement; (b) amendments to the 1985 Settlement Agreement that do not adversely impact airport capacity or airport safety; and (c) the then current County noise "curfew" ordinance

In August of 2000, the City Council asked the Board to consider extending the term of the 1985 Settlement Agreement. During the next two years, the City and County, with input from SPON and AWG, engaged in discussions regarding the appropriate terms and conditions of the extension. During this period, the City engaged in an extensive public information program with the assistance of other communities impacted by airport noise including Newport Beach, Costa Mesa, Orange, Santa Ana, Tustin and Anaheim (known collectively, together with Newport Beach, as the "Corridor Cities"). This process culminated in City, County, SPON and AWG approval of amendments to the 1985 Settlement Agreement (2002 Amendments - Exhibit A) that: (a) eliminated the "AA" class of aircraft; (b) increased the maximum number of noise regulated air carrier ADD from 73 to 85; (c) increased the maximum number of air cargo ADD from 2 to 4 (the County is authorized to allocate two air cargo ADD to air carriers pending requests for use of those ADD by air cargo carriers); (d) increased the service level limit from 8.4 to 10.3 MAP until January 1, 2011 and to 10.8 MAP on and after January 1, 2011 (with 500,000 seats allocated to regional jets); and (e) increased the maximum number of passenger loading bridges from 14 to 20. The 2002 Amendments also eliminated the floor area restrictions on the size of the terminal and the "cap" on public parking spaces.

City Council, SPON and AWG approval of the 2002 Amendments was contingent on receipt of a letter from the FAA confirming that the 2002 Amendments were consistent with ANCA, other relevant laws and regulations and grant assurances made by the County. In December 2002, the FAA sent a letter confirming compliance (FAA letter - Exhibit B). In January 2003, the Honorable Terry Hatter (the Federal District Court Judge who entered the stipulated judgment implementing the 1985 Settlement Agreement stipulation) also approved the stipulation of the parties implementing the 2002 Amendments.

The 2002 Amendments allowed the County to offer additional air transportation service without any significant increase in noise impacts on Newport Beach residents. The flight and service level restrictions remain in effect at least until January 1, 2016 and provisions related to the curfew remain in effect until at least January 1, 2021. The FAA letter confirming the validity of the 2002 Amendments is a precedent for future amendments that do not adversely impact airport capacity or airport safety.

C. LEGAL FRAMEWORK

The strategies, actions and decisions of the City Council and community groups concerned about airport impacts must consider and respect the complex statutory and decisional law related to aircraft operations and airport regulations. The failure of the City Council or community groups to accurately inform Newport Beach residents about the legal framework could lead to unreasonable expectations and ill-advised decisions and/or strategies. The following is a brief summary of some of the more important laws applicable to the control of aircraft operations and airports.

1. Noise Control.

The U.S. Supreme Court has decided that the owner of an airport - the proprietor - is the only non-federal entity that can adopt regulations restricting the amount of noise that is generated by aircraft operations. A non-proprietor such as the City of Newport Beach has no authority to adopt ordinances or resolutions that regulate airport noise. In fact, ANCA severely constrains the right of the proprietor to regulate Stage 3 aircraft operations. ANCA states that any "noise or access" restriction on commercial aircraft operating today must be "reviewed and approved" by the FAA. The FAA review is based on an extensive proprietor funded study of the impacts of the proposed restriction. As of this date, the FAA has not approved any proposed Stage 3 aircraft noise or access restriction and the consensus of aviation attorneys is that the FAA would be hostile

to any such a restriction. The 1985 Settlement Agreement predated ANCA and was "grandfathered" from its provisions. The 2002 Amendments were not subject to FAA review and approval, as confirmed by the FAA letter, because they did not adversely impact airport capacity or airport safety.

2. Aircraft Operations & Airport Facilities.

The FAA has exclusive jurisdiction over aircraft after takeoff and extensive authority over airport facilities. The FAA approves standard instrument and noise abatement departure procedures and has done so with respect to aircraft operations at JWA. The FAA also approves "airport layout plans" for each airport and has the authority to enforce regulations that promote and/or pertain to airfield and airport safety. While the proprietor retains the authority to decide the number and nature of certain facilities such as passenger loading bridges and aircraft tie-downs, the FAA has adopted, and has the discretion to enforce, numerous regulations governing airport facilities. Federal law preempts any local law purporting to regulate aircraft operations or airfield safety.

3. Interstate Commerce Clause.

Commercial air carrier operations are considered interstate commerce and the Interstate Commerce Clause can be invoked to invalidate local laws or regulations that purport to control certain aspects of those operations. The courts will invalidate laws or agreements that are found to be "unreasonable restraints" on Interstate Commerce.

D. POLICY - SUMMARY

The following components comprise the City's airport policy:

1. Primary Objective
2. Considerations
3. JWA Settlement Agreement
4. JWA Facilities & Operations
5. Alternative Transportation Service
6. Public Agency Support and Participation
7. Community Involvement
8. Monitoring/Recommendations

E. POLICY

1. Primary Objective

The City Council's primary objective is to protect Newport Beach residents from the adverse impacts of commercial aircraft operations at and from John Wayne Airport (JWA). The City Council believes that airport impacts are now, and will continue to be, the most significant threat to the quality of life of Newport Beach residents. Accordingly, the City should develop, modify as necessary and aggressively implement strategies and action plans that are designed to achieve the primary objective. The strategies and plans must consider and respect the complex legal, political and economic factors relevant to airport operations and impacts.

2. Considerations

The City's airport policy has, historically, been based on a thorough understanding and consideration of a wide range of factors that are relevant to airport operations and impacts. Factors relevant to airport operations and impacts include:

- a. State and Federal law;
- b. The attitudes, philosophy and regulations of the FAA;
- c. The state of the economy - national and regional;
- d. The economic condition of the air carrier industry;
- e. The regional demand for air transportation;
- f. Regional and sub-regional planning and transportation programs and policies;
- g. The decisions, philosophy and opinions of the Board of Supervisors and, to a lesser extent, other local, State and Federal representatives and officials; and
- h. The opinions and concerns of Orange County residents and business owners.

The number of relevant factors and the complexity of the issues related to adverse airport impacts mean that no single approach or simple strategy will be successful in achieving the City's primary objective. The City will be able to achieve its primary objective only if its strategies and action plans reflect a thorough understanding and consideration of these factors - especially the legal framework applicable to airport and aircraft operations - and if its residents understand the inherent limitations on the

City's legal authority to regulate aircraft operations or airport service levels.

3. JWA Settlement Agreement

The JWA Settlement Agreement is the primary vehicle by which the City exercises control over airport impacts. The operational and service level restrictions in the JWA Settlement Agreement remain in effect at least until January 1, 2016 and provisions related to the curfew remain in effect until at least January 1, 2021. The FAA letter confirming the validity of the 2002 Amendments is a precedent for future amendments that, like the 2002 Amendments, increase air transportation service without impacting airport capacity, airport safety or the quality of life of Newport Beach residents. The City Council shall pursue further amendments to adhere to the following fundamental principles with respect to the JWA Settlement Agreement and any modification or amendment under consideration:

- a. The City Council shall not consider or approve any agreement (including any amendment of the 2002 Amendments) that would or could result in any modification to the County's airport curfew ordinances.
- b. The City Council shall not consider or approve any agreement (including any amendment of the 2002 Amendments) that would or could lead to the construction of a second air carrier runway.
- c. The City Council should consider modifications to the Settlement Agreement only upon a determination, based on appropriate environmental documentation, that the modifications will not materially alter the quality of life, and are in the best long term interests, of Newport Beach residents most impacted by JWA.
- d. As a condition to any amendment of the 2002 Amendments or successor agreements, the City Council should obtain a favorable FAA determination that the proposed amendment or agreement is exempt from FAA review and approval on the basis that there is no adverse impact on airport capacity or airport safety and complies with other relevant federal laws and regulations.

4. JWA Facilities & Operations

JWA has a single air carrier runway with air carrier, air cargo and general aviation facilities sharing approximately 500 acres. The City Council shall take any action necessary to ensure that no additional air carrier runway is constructed. The City Council shall also take any action necessary to

prevent any modification of the existing noise curfew that, generally speaking, prohibits certain departures from 10:00 p.m. to 7:00 a.m. (8:00 a.m. Sunday morning). The City should also support any plan or proposal that maintains, and oppose any plan or project that proposes any significant change to, the existing level of general aviation operations, the current level of general aviation support facilities or the General Aviation Noise Ordinance. Finally, the City shall take all steps necessary to preserve or enhance the existing remote monitoring system (RMS) and public disclosure of RMS readings and information.

The City, through the Aviation Committee, will also continuously evaluate means and methods by which JWA impacts can be minimized including the analysis of changes in airport procedures and aviation related technological advancements to determine if feasible alternatives exist. In the event the City identifies feasible alternatives that could reduce adverse airport impacts the City shall take all reasonable actions necessary to implement the alternative(s).

5. Alternative Transportation Service

The City Council recognizes that there is presently no feasible site for a second air carrier airport in Orange County and that residential and commercial development is likely to result in increased air transportation demand over time. Accordingly, the City Council should support opportunities to serve some Orange County air transportation demand at airports other than JWA including:

- a. Promoting circulation and transportation improvements from Orange County residential and business communities to outlying airports with capacity in excess of current operations levels such as Ontario Airport and San Bernardino International Airport.
- b. Supporting development of new or expanded air carrier facilities in locations that are, or could be with appropriate transportation links, convenient to Orange County residents.
- c. Supporting the development of new or expanded air cargo service and facilities that could increase the airfield or airspace capacity of existing passenger serving airports.
- d. Supporting regional and sub-regional plans and programs that are consistent with then current JWA operational and passenger service levels and provide potentially feasible means or mechanisms to serve some Orange County air transportation demand at facilities other than JWA.

6. Public Agency Support and Participation

The City Council should continuously pursue support for each component of this Policy from other public agencies, especially those concerned about JWA impacts. A key component of any such initiative is the Corridor City coalition. The Corridor City coalition was a major force in Board approval of the 2002 Amendments. The Corridor City coalition was built on a foundation of mutual interest in JWA operations and regular meetings between members of the respective City Councils supported by interaction between city managers and/or city attorneys. The City should continue to arrange regular meetings of the Corridor City coalition to update members on any activity that could be relevant to Orange County air transportation or JWA operations.

The City will participate, to the maximum extent possible, in local and regional planning processes that have a bearing on decisions regarding airport capacity, airport service and other relevant issues. Of particular importance is participation in the Southern California Association of Governments' (SCAG) development of the Regional Transportation Plan. The City Council and staff will also regularly meet and communicate with County, State and Federal elected or appointed officials regarding the actions that the officials can take (or oppose) that will help the City achieve its primary objective.

7. Community Involvement

The City Council recognizes that any plan or strategy to control JWA impacts requires support and assistance from community-based groups concerned about airport impacts. These groups, such as the AWG, have volunteered thousands of hours pursuing strategies and plans designed to minimize airport impacts and were instrumental in past successes. The City Council welcomes, and will support, the efforts of any group or individual that is striving to achieve the City's primary objective, understands the legal, political and economic factors that are relevant to the control of airport impacts and seeks to achieve the City's primary objective in a manner that reflects full consideration and understanding of those factors.

The City will communicate regularly with its residents relative to the key provisions of this Policy as well as local and regional activities that are relevant to this Policy. As part of this communication, Council members

and staff will regularly meet with the leaders and/or members of citizen-based organizations concerned about airport impacts.

8. Monitoring/Recommendations

The City Council is ultimately responsible to achieve the primary objective of this policy – to minimize the impact of JWA operations on the quality of life of Newport Beach residents. The City Council shall designate the City Manager as the employee primarily responsible for coordinating the implementation of this Policy. The City Manager, personally or through one or more designees, shall implement this Policy including regular communications with residents, the leaders of community organizations and the Corridor Cities. The City Manager shall periodically report the status of implementation to the City Council and shall perform the following:

- a. **Monitoring Settlement Agreement Compliance.** The City Manager shall carefully and thoroughly monitor those aspects of airport operation relevant to the Settlement Agreement, including County enforcement of the General Aviation Noise Ordinance and provide the Aviation Committee and the City Council with periodic reports.
- b. **Monitoring Regional Airport Plans/Programs.** The City Manager should continuously monitor efforts or plans by any agency or entity to develop new airports, expand existing facilities or otherwise provide additional air or ground transportation service that could serve Orange County air transportation demand.
- c. **Monitoring Regional Planning Agencies.** Agencies such as SCAG have the authority to, and do, adopt plans and programs that materially impact airport planning, airport usage, airport development and access to airports. The City Manager should ensure that a City representative routinely attends all SCAG meetings that pertain to aviation and report all relevant activities to the City Council and the Aviation Committee.
- d. **Monitoring State & Federal Legislative Sessions.** State and Federal legislation – such as ANCA – have the potential to impact JWA and Orange County air transportation issues in a variety of ways. The City Manager should routinely monitor all proposed State legislation and, to the extent feasible, potentially relevant Federal legislation and notify the City Council and the Aviation Committee of any legislation that is relevant to the City's ability to protect its residents from impacts related to JWA operations.

- e. Recommendations. The City Manager should continuously advise the City Council on actions that should be taken to implement this Policy in a manner consistent with the Fundamental Principles. The City Manager shall prepare and submit to the City Council for consideration at a noticed public meeting reports that explain the rationale for any recommendation.

Adopted - February 14, 1972

Amended - October 14, 1975

Amended - November 27, 1978

Amended - October 14, 1980

Amended - July 27, 1981

Amended - September 27, 1982

Amended - March 14, 1983

Amended - May 23, 1985

Amended - December 9, 1985

Amended - October 22, 1990

Formerly B-1 and B-2

Adopted - December 13, 1993

Amended - February 27, 1995

Amended - March 22, 1999

Amended - July 25, 2006

CITY OF NEWPORT BEACH

Office of the City Attorney

APPROVED

TO: Mayor and Members of the City Council

**FROM: Homer Bludau
Robert Burnham**

**RE: John Wayne Airport Settlement Agreement
Proposed Extension
Proposed MOU**



DATE: May 22, 2001

BACKGROUND

The 1985 John Wayne Airport Settlement Agreement (Agreement) expires at the end of 2005 and the City Council has consistently advocated an extension of the term of the Agreement. The City Council adopted a resolution on August 8, 2000 that formally requested the Board of Supervisors to join with the City to begin the environmental review process that must be completed prior to approval of any amendment of the Agreement. On December 5, 2000, the Board of Supervisors directed County staff to meet with City staff to develop the terms and conditions of a proposed amendment of the Agreement in sufficient detail to enable preparation of an environmental document and discussion with interested parties. On May 8, 2001 the Board of Supervisors directed the CAO to initiate the CEQA process and to negotiate a Memorandum of Understanding (MOU) that would establish Project alternatives as well as defining the respective roles of the City and County in preparing the environmental document. The MOU and Project alternatives are to be submitted to the Board for approval on May 22, 2001.

DISCUSSION

Staff has prepared a "PowerPoint" presentation that compares the key provisions of the Settlement Agreement with the terms and conditions of the proposed amendment (Project) that the Board approved for purposes of environmental review. The "project" was selected as the starting point for environmental analysis and does not reflect any agreement on the terms and conditions of an amendment to the Settlement Agreement. The project grew out of discussions with County staff and, in certain respects, reflects

their views on terms and conditions that may be in the interests of the County and the air carriers that provide service at JWA.


The John Wayne Airport Settlement Agreement Extension Committee (Committee) has been advised regarding the general terms and conditions of the MOU but has not, as of this date, had an opportunity to review and evaluate the document. The Committee will make an oral report, with recommendations, at the meeting. Copies of the proposed MOU will be distributed to the City Council when staff has received the draft document to be presented to the Board of Supervisors.

RECOMMENDATIONS

Staff is recommending that the City Council take the following actions:

1. Authorize the City Manager to execute an MOU regarding preparation of the EIR;
2. Authorize the City Manager to execute agreements with consultants to prepare portions of the environmental document so long as the expenditures are within budgetary authority;
3. Approve a budget amendment designating \$400,000 for purposes of completing the environmental document on the Project.


Homer Bludau


Robert H. Burnham

City of Newport Beach

NO. BA- 053

BUDGET AMENDMENT 2000-01

AMOUNT: \$400,000.00

EFFECT ON BUDGETARY FUND BALANCE:

X

Increase Revenue Estimates
Increase Expenditure Appropriations AND
Transfer Budget Appropriations

X

Increase in Budgetary Fund Balance
Decrease in Budgetary Fund Balance
No effect on Budgetary Fund Balance

SOURCE:

X

from existing budget appropriations
from additional estimated revenues
from unappropriated fund balance

EXPLANATION:

This budget amendment is requested to provide for the following:

To increase expenditures related to the settlement Agreement EIR.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Account	Description
010	3605	Fund Balance

Amount	
Debit	Credit
\$400,000.00 *	

REVENUE ESTIMATES (3601)

Fund/Division	Account	Description
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EXPENDITURE APPROPRIATIONS (3603)

		Description	
Division	Number	0110 City Council	
Account	Number	8080 Services - Professional & Technical	\$400,000.00
Division	Number		
Account	Number		
Division	Number		
Account	Number		
Division	Number		
Account	Number		

* Automatic System Entry.

Signed: Dennis P. Donnan

Financial Approval: Administrative Services Director

5-18-01
Date

Signed: Norman L. Bush

Administrative Approval: City Manager

5/18/01
Date

Signed: _____

City Council Approval: City Clerk

Date

JWA SETTLEMENT AGREEMENT

- SETTLED A LAWSUIT FILED BY THE COUNTY AGAINST THE CITY/OTHERS
- LAWSUIT ASKED COURT TO APPROVE THE EIR FOR THE JWA MASTER PLAN
- JWA MASTER PLAN PROPOSED A NEW TERMINAL AND INCREASED FLIGHTS (10.4 "MAP")
- APPROVED BY THE CITY, COUNTY, AWG AND SPON IN 1985

AGREEMENT IN A NUTSHELL

- TERM IS 20 YEARS (DEC. 31, 2005)
- LIMITS "NOISE REGULATED" FLIGHTS TO 73 AVERAGE DAILY DEPARTURES (ADD)
- LIMITS GATES (14) AND SIZE OF TERMINAL
- 8.4 MILLION ANNUAL PASSENGERS (MAP)
- PRESERVES CURFEW AND GANO

COUNTY/NEWPORT BEACH **NEGOTIATIONS**

- 8/00 - CITY ASKS COUNTY TO SUPPORT EXTENSION OF SETTLEMENT AGREEMENT
- 12/00 - COUNTY DIRECTS STAFF TO WORK WITH CITY ON A PROJECT DESCRIPTION
- 5/8/01 BOARD DIRECTS CEO TO INITIATE CEQA PROCESS AND PREPARE MOU
- 5/22/01 BOARD UNANIMOUSLY APPROVES MOU AND THREE ALTERNATIVES

ALTERNATIVE A

- NO CHANGE IN CURFEW (UNTIL 2026)
- 4 NEW GATES PERMITTED 1/1/05
- IF 4 GATES BUILT, MAY INCREASE FLIGHTS FROM 73 TO 85 AND MAP FROM 8.4 TO 9.8)
- NO CHANGE GA OR GANO
- NO MASTERPLANNING UNTIL 1/1/16

ALTERNATIVE B

- 4 NEW GATES AUTHORIZED 4/1/02
- INCREASE MAP FROM 8.4 TO 10.8 AND FLIGHTS FROM 73 TO 85 AS OF 4/1/02
- TWO MORE CARGO FLIGHTS 1/1/06
- NOISE LIMITS IN PLACE UNTIL 1/1/11
- NO PLANNING RESTRICTIONS

ALTERNATIVE C

- 4 NEW GATES 4/1/02 & 6 NEW GATES 1/1/06
- FLIGHTS INCREASED TO 85 ON 4/1/02 AND 100 ON 1/1/06
- NO MAP CAP
- NOISE LIMITS REMAIN UNTIL 1/1/16
- NO PLANNING RESTRICTIONS

JWA EXPANSION SCENARIOS IN EIR 573

- **EIR 573 PREPARED BY THE COUNTY TO EVALUATE THE IMPACTS OF A COMMERCIAL AIRPORT AT EL TORO**
- **CEQA REQUIRED COUNTY TO EVALUATE JWA EXPANSION IF NO EL TORO**
- **COUNTY CHOSE TWO JWA EXPANSION SCENARIOS - ALTERNATIVES F & G**

ALTERNATIVE F

- 14 MAP BY 2020
- 29 AIR CARRIER GATES/ 8 COMMUTER
- TERMINAL 3 TIMES LARGER
- INCREASE OF 75,392 FLIGHTS
- INCREASE ACCIDENT POTENTIAL,
TRAFFIC AND AIR POLLUTION

ALTERNATIVE G

- GATES INCREASED FROM 14 TO 52
- TERMINAL SIX TIMES LARGER
- TWO RUNWAYS
- MAP FROM 8.4 TO 25
- 700 ACRES OF LAND CONDEMNED
- 200,000 MORE FLIGHTS EACH YEAR
- COST 4.3 BILLION

WHERE DO WE GO FROM HERE?

- COUNCIL APPROVAL OF MOU 5/22/01
- COUNTY IS LEAD AGENCY AND CITY IS RESPONSIBLE AGENCY AND PAYS FOR EIR
- COUNTY PREPARES EIR WITH CITY INPUT
- WE WILL MEET WITH MANY INTERESTED PARTIES INCLUDING FAA, AIR CARRIERS AND JWA CORRIDOR CITIES

THE PROCESS

- DRAFT EIR COMPLETED ON NOVEMBER 1, 2001
- 45 DAY COMMENT PERIOD
- BOARD CERTIFICATION OF EIR AND APPROVAL OF AN EXTENSION ON 1/15/02
- CITY COUNCIL APPROVAL OF EXTENSION ON 1/22/02

City of Newport Beach

NO. BA- 053

BUDGET AMENDMENT 2000-01

AMOUNT: \$400,000.00

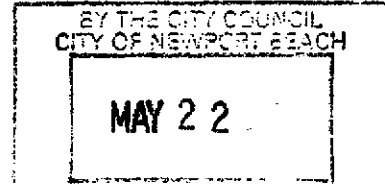
EFFECT ON BUDGETARY FUND BALANCE:

<input type="checkbox"/>	Increase	Revenue Estimates	
<input checked="" type="checkbox"/>	Increase	Expenditure Appropriations	<u>AND</u>
<input type="checkbox"/>	Transfer	Budget Appropriations	

<input type="checkbox"/>	Increase in Budgetary Fund Balance
<input checked="" type="checkbox"/>	Decrease in Budgetary Fund Balance
<input type="checkbox"/>	No effect on Budgetary Fund Balance

SOURCE:

<input type="checkbox"/>	from existing budget appropriations
<input type="checkbox"/>	from additional estimated revenues
<input checked="" type="checkbox"/>	from unappropriated fund balance



EXPLANATION:

APPROVED

This budget amendment is requested to provide for the following:

To increase expenditures related to the settlement Agreement EIR.

ACCOUNTING ENTRY:

BUDGETARY FUND BALANCE

Fund	Account	Description
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REVENUE ESTIMATES (3601)

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EXPENDITURE APPROPRIATIONS (3603)

		Description	
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Division	Number		
Account	Number		
Division	Number		
Account	Number		
Division	Number		
Account	Number		

* Automatic System Entry.

Signed: Dennis P. Danner
Financial Approval: Administrative Services Director

5-18-01
Date

Signed: Harmon L. Bud
Administrative Approval: City Manager

5/18/01
Date

Signed: Louanne M. Markless
City Council Approval: City Clerk

5/22/01
Date