

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 30 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 (in 2002 and 2014) the term 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 physical expansion of the airport, 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 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 residents of each Council 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 December of 2002, the City, County, SPON and AWG approved amendments to the 1985 Settlement Agreement (2002 Amendments) 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.

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 under the 2002 Amendments were effective until January 1, 2016 and provisions related to the curfew remain

in effect until at least January 1, 2021. The FAA confirmed the validity of the 2002 Amendments, thus establishing a precedent for future amendments that do not adversely impact airport capacity or airport safety.

In 2012, recognizing that the 1985 Settlement Agreement (as amended) would expire in 2015, the City Council asked the County to consider a further extension of the 1985 Settlement Agreement. In April 2013, the County, City, AWG, and SPON entered into a Memorandum of Understanding (2013 MOU) outlining the terms for the extension of the 1985 Settlement Agreement and to define their respective roles and responsibilities in the preparation of an environmental impact report (EIR) for the extension of the 1985 Settlement Agreement.

In September and October of 2014, the City, County, SPON, and AWG approved amendments to the 1985 Settlement Agreement (2014 Amendments - Exhibit A) that: (a) extended the term of the 1985 Settlement Agreement until at least December 31, 2030; (b) requires that there be no change to the curfew until at least December 31, 2035; (c) maintains the 10.8 MAP limit through December 31, 2020 and increases the MAP level for departing and arriving passengers at JWA to 11.8 MAP, beginning on January 1, 2021, through December 31, 2025, and increasing the MAP level from 11.8 MAP to 12.2 or 12.5 MAP , beginning on January 1, 2026, through December 31, 2030; (d) maintains the 85 Class A ADD limit through December 31, 2020 and increases the limits on said flights from January 1, 2021, through December 31, 2030 to 95 ADDs; (e) maintains the number of ADDs allocated to air cargo service at four ADDs, two of which can be used for commercial air passenger flights, through December 31, 2030; and (f) prohibits additional passenger loading bridges through December 31, 2020, at which time the restriction on the number of passenger loading bridges would be lifted.

In September of 2014, the FAA made a favorable determination that the 2014 Amendments do not have an adverse impact on airport capacity or airport safety and that the 2014 Amendments comply with other relevant federal laws and regulation (Exhibit B).

In October of 2014, the Honorable Terry J. Hatter, Jr. (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 2014 Amendments.

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 and 2014 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 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, 2031 and provisions related to the curfew remain in effect until at least January 1, 2036. FAA letters confirming the validity of the 2002 and 2014 Amendments is a precedent for future amendments that, like the 2002 and 2014 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 and 2014 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 and 2014 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 and 2014 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 and 2014 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
Amended - May 12, 2015

COPY

CCO NOT OFR

CITY OF NEWPORT BEACH
 RECEIVED BY 
 NOV 10 2014
 OFFICE OF THE
 CITY ATTORNEY

FILED
 CLERK, U.S. DISTRICT COURT
 OCT 23 2014
 CENTRAL DISTRICT OF CALIFORNIA
 BY  DEPUTY

1-3424

1 Nicholas S. Chrisos, County Counsel (Bar No. 70442)
 Paul M. Albarian, Deputy County Counsel (Bar No. 232833)
 2 palbarian@ocair.com
 County of Orange
 3 P.O. Box 1379
 Santa Ana, CA 92702-1379
 4 Telephone: (949) 252-5280
 Facsimile: (949) 252-5044
 5
 Attorneys for County of Orange

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

8 COUNTY OF ORANGE,) Case No. CV 85-1542 TJH (MCx)
 9 Plaintiffs,) **ORDER RE**
 v.) **NINTH SUPPLEMENTAL**
 10 AIR CALIFORNIA, et al.) **STIPULATION BY THE COUNTY OF**
 Respondents.) **ORANGE, CALIFORNIA, THE CITY**
 11 CITY OF NEWPORT BEACH,) **OF NEWPORT BEACH, STOP**
 Counterclaimant,) **POLLUTING OUR NEWPORT, AND**
 12) **THE AIRPORT WORKING GROUP**
 v.) **OF ORANGE COUNTY, INC.,**
 13) **AMENDING THE TERMS AND**
 COUNTY OF ORANGE; ORANGE) **CONDITIONS OF THE PREVIOUS**
 14 COUNTY BOARD OF SUPERVISORS,) **STIPULATIONS OF THOSE PARTIES**
 and DOES 1 through 1,000, Inclusive,) **AND REQUESTING A**
 15 Counterdefendants.) **MODIFICATION OF AN**
) **EXECUTORY JUDGMENT OF THE**
 16) **COURT**
)
 17) **AND**
)
 18) **~~PROPOSED~~ ORDER**

19 AND RELATED COUNTERCLAIMS.
 20
 21

~~PROPOSED~~

MODIFIED FINAL JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

1. In 1985, the County of Orange, the City of Newport Beach, Stop Polluting Our Newport, and the Airport Working Group ("Settling Parties") entered into a Stipulation for Entry of Final Judgment by Certain Settling Parties, settling all pending actions and claims related to the 1985 Master Plan of John Wayne Airport ("JWA") and related actions ("the 1985 Settlement Agreement"). On December 13, 1985, this Court entered Final Judgment on Stipulation for Entry of Judgment by Certain Settling Parties which accepted the stipulation of the Settling Parties and incorporated certain portions of their stipulation into that judgment. The principal terms of the 1985 Settlement Agreement relate to restrictions and limitations on aircraft operations and commercial passenger facilities.

2. In the intervening years, by stipulations of the Settling Parties, orders of the Court have been entered to reflect certain modifications in the agreement of the Settling Parties which were contained in stipulations presented to and approved by the Court. None of these modifications further restricted operations or facilities as compared to the 1985 Settlement Agreement.

3. The Settling Parties have now presented to the Court a Ninth Supplemental Stipulation by the County of Orange, California, the City of Newport Beach, Stop Polluting Our Newport, and the Airport Working Group of Orange County, Inc., Amending the Terms and Conditions of the Previous Stipulations of those Parties

1 ("Amended Stipulation") and Requesting a Modification of an Executory Judgment of
2 the Court and [Proposed] Order.

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

4 A. The Amended Stipulation contains many of the terms of the 1985
5 Settlement Agreement and the eight (8) previous stipulations of the Settling Parties and
6 for clarity and ease of reference, the Amended Stipulation is deemed to contain all of
7 the agreements and obligations of the Settling Parties.

8 B. The provisions of paragraphs 15 through 44 and 53 through 61 of the
9 Amended Stipulation are hereby incorporated as part of this Modified Final Judgment.

10 C. The Settling Parties shall each bear their own costs and attorneys' fees in
11 connection with the entry of this Modified Final Judgment.

12 **IT IS SO ORDERED.**



13 Dated: October 23, 2014 By: _____
14 The Honorable Terry J. Hatter, Jr.
15 United States District Judge

16
17
18
19
20
21

Exhibit A

1 Nicholas S. Chrisos, County Counsel (Bar No. 70442)
Paul M. Albarian, Deputy County Counsel (Bar No. 232833)
2 palbarian@ocair.com
County of Orange
3 P.O. Box 1379
Santa Ana, CA 92702-1379
4 Telephone: (949) 252-5280
Facsimile: (949) 252-5044

5 Attorneys for County of Orange
6 (See next page for additional counsel)

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 COUNTY OF ORANGE,) Case No. CV 85-1542 TJH (MCx)
Plaintiffs,)
10 v.) NINTH SUPPLEMENTAL
AIR CALIFORNIA, et al.) STIPULATION BY THE COUNTY OF
Respondents.) ORANGE, CALIFORNIA, THE CITY
11) OF NEWPORT BEACH, STOP
CITY OF NEWPORT BEACH,) POLLUTING OUR NEWPORT, AND
12) THE AIRPORT WORKING GROUP
Counterclaimant,) OF ORANGE COUNTY, INC.,
v.) AMENDING THE TERMS AND
13) CONDITIONS OF THE PREVIOUS
COUNTY OF ORANGE; ORANGE) STIPULATIONS OF THOSE PARTIES
14) AND REQUESTING A
COUNTY BOARD OF SUPERVISORS,) MODIFICATION OF AN
and DOES 1 through 1,000, Inclusive,) EXECUTORY JUDGMENT OF THE
15) COURT
Counterdefendants.)
16) AND
17)
18) [PROPOSED] ORDER

19 AND RELATED COUNTERCLAIMS.
20
21

1 Lori D. Ballance (Bar No. 133469)
lballance@gdandb.com

2 Danielle K. Morone (Bar No. 246831)
dmorone@gdandb.com

3 Gatzke Dillon & Ballance LLP
2762 Gateway Road
4 Carlsbad, California 92009
Telephone: (760) 431-9501
5 Facsimile: (760) 431-9512

6 Attorneys for County of Orange

7 Aaron C. Harp (Bar No. 190665)
aharp@newportbeachca.gov

8 City Attorney
100 Civic Center Drive
9 Newport Beach, California 92660
Telephone: (949) 644-3131
10 Facsimile: (949) 644-3139

11 Attorneys for City of Newport Beach

12 Barbara Lichman (Bar No. 138469)
blichman@buchalter.com

Buchalter Nemer
13 18400 Von Karman Avenue, Suite 800
Irvine, California 92612
14 Telephone: (949) 224-6292
Facsimile: (949) 720-0182

15 Attorneys for Airport Working Group of Orange County, Inc. (AWG)

16 Steven M. Taber (Bar No. 250205)
staber@taberlaw.com

17 Taber Law Group PC
18 P.O. Box 60036
Irvine, California 92602
19 Telephone: (949) 735-8217
Facsimile: (714) 707-4282

20 Attorneys for Stop Polluting Our Newport (SPON)

21

1 **I. BASIS FOR THE "1985 SETTLEMENT AGREEMENT"**

2 1. In November 1985, the County of Orange and the Orange County Board of
3 Supervisors ("Board") (collectively, the "County"), the City of Newport Beach
4 ("City"), Stop Polluting Our Newport ("SPON"), and the Airport Working Group of
5 Orange County, Inc. ("AWG") (City, SPON and AWG are sometimes collectively
6 referred to as "the City"), by their respective counsel of record, entered into a
7 stipulation to implement the settlement of the longstanding dispute between the County
8 and the City concerning the development and operation of John Wayne Airport
9 ("JWA") ("the 1985 Settlement Agreement"). The parties are sometimes collectively
10 referred to in this Ninth Supplemental Stipulation ("Amended Stipulation") as the
11 "Settling Parties."

12 On December 15, 1985, the U.S. District Court entered a final judgment ("the
13 confirming judgment") pursuant to the 1985 Settlement Agreement, which: (1)
14 adjudicated that Environmental Impact Report 508/Environmental Impact Statement
15 ("EIR 508/EIS") was legally adequate for the "EIR 508/EIS Project" (as that term is
16 hereafter defined) under the California Environmental Quality Act ("CEQA"), the
17 National Environmental Policy Act ("NEPA"), and all relevant state and federal
18 implementing regulations; (2) adjudicated that all other claims, controversies and/or
19 counterclaims were dismissed without prejudice; and (3) contained specific provisions
20 for enforcement of the 1985 Settlement Agreement.

21

Exhibit A

1 2. The compromise settlement reached by the Settling Parties reflected, under
2 all of the circumstances, the individual judgments of the Settling Parties regarding an
3 appropriate or acceptable balance between demand for air travel services in Orange
4 County and any adverse environmental effects associated with the operation of JWA.
5 The Settling Parties acknowledge that, without the 1985 Settlement Agreement and
6 confirming judgment, protracted litigation would have continued and created an
7 ongoing risk of impeding or preventing the County's development of JWA, and its
8 ability to create additional access opportunities for commercial operators desiring to
9 use JWA.

10 3. Other provisions of the Settling Parties' agreement included actions that
11 were generally described in, but not implemented directly through, the 1985 Settlement
12 Agreement. Those provisions included actions undertaken by the County in adopting
13 and implementing Resolution Nos. 85-1231, 85-1232 and 85-1233 (all adopted on
14 August 27, 1985) concerning certification of EIR 508/EIS, adoption of additional
15 mitigation measures and additional airport site studies in Orange County, and the
16 parties' dismissal of other litigation concerning JWA.

17 4. In reaching the 1985 Settlement Agreement, the Settling Parties
18 considered operational and other factors applicable to JWA that are not applicable to
19 any other airport. As such, the 1985 Settlement Agreement is site specific to JWA,
20 premised upon its unique history, operational characteristics and limitations.
21 Specifically, the essential character of JWA as an airport facility, both operationally

Exhibit A

1 and environmentally, is defined by the significant and substantial physical and
2 environmental constraints affecting public use of the facility, including, but not limited
3 to, the extremely confined airport area that includes a total of approximately five
4 hundred and four (504) acres, less than four hundred (400) acres of which are available
5 for airfield operations, an extensive highway and local street system that surrounds the
6 area, and residential and commercial areas located generally to the southeast, south,
7 west, southwest, and north of the airport area, and commercial areas to the east of the
8 airport area.

9 5. Regularly scheduled commercial service was first initiated at JWA in
10 1967; and, since the late 1960s, the County has regulated the use and operation of JWA
11 by a variety of means in an effort to control and reduce any adverse environmental
12 impacts caused by aircraft operations to and from JWA. These regulations have
13 included such restrictions as: (i) strict noise-based limitations on the type of aircraft that
14 are permitted to use JWA, including both commercial and general aviation aircraft; (ii)
15 a nighttime "curfew" on aircraft operations exceeding certain specified noise levels;
16 and (iii) limitations on the number of average daily commercial departures which can
17 occur at the facility, either directly or through a limit on the permitted number of annual
18 commercial passengers. Even prior to 1985, the controlled nature of the airport's
19 operation, arising from a wide range of political, environmental, social and economic
20 considerations, had become institutionalized to the extent that the regulated nature of
21 the airport was a definitional component of its character as an air transportation facility.

1 6. The 1985 Settlement Agreement and confirming judgment were not
2 intended to, and did not: (i) create any rights in favor of any persons other than the
3 Settling Parties; or (ii) make the Settling Parties (other than the County) or any other
4 person, parties to, or third party beneficiaries of, any contractual agreement between the
5 County, as airport proprietor of JWA, and the United States of America (or any of its
6 agencies).

7 **II. BASIS OF AMENDMENTS TO THE TERMS AND CONDITIONS**

8 7. Subsequent to execution of the 1985 Settlement Agreement and prior to
9 this Ninth Supplemental Stipulation, the County and other Settling Parties negotiated
10 eight series of amendments to the original agreement, which were filed with this
11 Court. Those eight previous stipulations made various amendments to the provisions of
12 the 1985 Settlement Agreement and reflect a long-standing, collaborative relationship
13 between the County and other Settling Parties. Consistent with historical practice, in
14 January 2012, the County and other Settling Parties initiated discussions regarding the
15 possibility of amending the 1985 Settlement Agreement to extend beyond 2015.

16 8. On April 16, 2013, the Board approved a Memorandum of Understanding
17 (“MOU”)¹ between the County and the Settling Parties pursuant to which the County
18 would act as lead agency (with the City designated a responsible agency) in the

19 ¹ For purposes of evaluating potential amendments to the 1985 Settlement
20 Agreement, the MOU identified a “Proposed Project,” as defined by the operational
21 parameters set forth in Paragraphs 15, 37 through 39, and 41 below, as well as four
alternatives, referred to as the CEQA-mandated No Project Alternative, Alternative A,
Alternative B and Alternative C.

Exhibit A

1 preparation of an Environmental Impact Report (“EIR”) that would support County and
2 City approval of an operational scenario evaluated in the EIR regarding amendments to
3 the terms and conditions of the 1985 Settlement Agreement concerning restrictions at
4 JWA. This EIR was designated as EIR 617 and was circulated for public review and
5 comment pursuant to and consistent with CEQA (Pub. Resources Code, §21000 et seq.)
6 and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.).

7 9. Final EIR 617 was found complete and adequate under CEQA by the
8 Board of Supervisors on September 30, 2014. On that date, the Board:

9 (a) Certified Final EIR 617 as adequate and complete and as containing all
10 information required by CEQA, the State CEQA Guidelines, and the County Local
11 CEQA Procedures Manual;

12 (b) Adopted the statutorily required Findings, Mitigation Monitoring and
13 Reporting Plan and Statement of Overriding Considerations consistent with CEQA and
14 the State CEQA Guidelines;

15 (c) Approved the Proposed Project, thereby authorizing an increase in
16 permitted operational capacities at levels defined in Paragraphs 15, 37 through 39, and
17 41 below; and,

18 (d) Authorized execution of an Amended Stipulation after its approval and
19 execution by the City, SPON and AWG, and subject to the Airport Director receiving a
20 letter from the Federal Aviation Administration (“FAA”) stating that the Amended
21 Stipulation is consistent with federal law.

Exhibit A

1 10. Consistent with the MOU's provisions, EIR 617 evaluated proposed
2 modifications to some of the provisions of the 1985 Settlement Agreement, including
3 an increase in permitted operational capacities and an extension of the term of the
4 agreement. In order to permit the Board and the City to determine the final terms of any
5 amendments to the 1985 Settlement Agreement, the "Proposed Project," and four other
6 alternatives (see, supra, footnote 1), were each evaluated in the EIR to an equivalent
7 level of detail that would permit the County and the City to adopt amendments to the
8 1985 Settlement Agreement consistent with all or a portion of either the Proposed
9 Project or the alternatives.

10 11. On October 14, 2014, the City authorized execution of this Amended
11 Stipulation subject to certain conditions, including receipt of the FAA Chief Counsel
12 opinion letter referenced above. On or about September 3 and 17, 2014, respectively,
13 AWG and SPON each authorized execution of this Amended Stipulation subject to
14 conditions similar to those specified by the City and the County.

15 12. All conditions to the execution of this Amended Stipulation by each of the
16 Settling Parties have been satisfied and, a copy of the FAA's letter to the Airport
17 Director, dated September 29, 2014, confirming that the Amended Stipulation is
18 consistent with federal law is attached to this Stipulation as "Exhibit A."

19 13. The goals and objectives of the County, as the lead agency, the project
20 proponent and the airport proprietor, in preparing EIR 617 and entering into this
21 Amended Stipulation, included:

Exhibit A

1 (a) Modifying some existing restrictions on aircraft operations at JWA in
2 order to provide increased air transportation opportunities to the air-traveling public
3 using JWA without adversely affecting aircraft safety, recognizing that aviation noise
4 management is crucial to continued increases in JWA's capacity;

5 (b) Reasonably protecting the environmental interests and concerns of persons
6 residing in the vicinity of JWA, including their concerns regarding "quality of life"
7 issues arising from the operation of JWA, including but not limited to noise and traffic;

8 (c) Preserving, protecting, and continuing to implement the important
9 restrictions established by the 1985 Settlement Agreement, which were "grandfathered"
10 under the Airport Noise and Capacity Act of 1990 and reflect and accommodate
11 historical policy decisions of the Board regarding the appropriate point of balance
12 between the competing interests of the air transportation and aviation community and
13 local residents living in the vicinity of JWA;

14 (d) Providing a reasonable level of certainty to the following interests
15 regarding the level of permitted aviation activity at JWA for a defined future period of
16 time: surrounding local communities, Airport users (particularly scheduled commercial
17 users), and, the air-traveling public; and,

18 (e) Considering revisions to the regulatory operational restrictions at JWA in
19 light of the current aviation environment, the current needs of the affected
20 communities, and industry interests represented at JWA.

21

Exhibit A

1 These objectives are consistent with a long-standing and adopted policy of the
2 County to operate JWA in a manner that provides the maximum air transportation
3 opportunities at JWA, while ensuring that airport operations do not unreasonably result
4 in adverse environmental effects on surrounding communities.

5 14. Subject to the approval of the Court by entry of a Modified Final Judgment
6 consistent with this Amended Stipulation (“the Modified Final Judgment”), this
7 Amended Stipulation contains all of the obligations of the Settling Parties. The County
8 shall have no obligation to the City, SPON or AWG, nor shall there be any restriction
9 on the discretion of the County in its capacity as airport proprietor of JWA, except as
10 that obligation or restriction is expressly stated in this Amended Stipulation.

11 15. This Amended Stipulation continues the essential terms and conditions of
12 the 1985 Settlement Agreement regarding the County’s development and operation of
13 JWA, with certain capacity enhancing modifications, including:

14 (a) Increasing the number of regulated flights allocated to passenger
15 Commercial Carriers at JWA from eighty-five (85) average daily departures (“ADDs”)
16 to ninety-five (95) ADDs, beginning on January 1, 2021, through December 31, 2030;

17 (b) Increasing the Million Annual Passengers (“MAP”) level served at JWA
18 from 10.8 MAP to 11.8 MAP, beginning on January 1, 2021, through December 31,
19
20
21

1 2025, and increasing the MAP level served at JWA from 11.8 MAP to 12.2 or 12.5
2 MAP,² beginning on January 1, 2026, through December 31, 2030; and,

3 (c) Eliminating the limit on the permitted number of commercial passenger
4 loading bridges at JWA beginning on January 1, 2021.

5 **III. DEFINITIONS**

6 For purposes of this Amended Stipulation and the proposed Modified Final
7 Judgment, the terms below are defined as follows:

8 16. "ADD" means "average daily departure," which is computed on an annual
9 basis from January 1 through December 31 of each calendar year. One ADD authorizes
10 any person requiring ADDs for its operations at JWA to operate 365 (or 366 in any
11 "leap year") authorized departures during each Plan Year, subject to the definitions,
12 provisions, conditions and limitations of this Amended Stipulation and implementing
13 regulations of the County.

14 "ADD" includes all Class A departures, except emergency or mercy flights,
15 departures resulting from mechanical failures, emergency or weather diversions to
16 JWA necessary to reposition an aircraft into its normal scheduling rotation, the
17 repositioning of aircraft to another airport in connection with a published change in the

18 _____
19 ² The trigger for the capacity increase to 12.5 MAP beginning on January 1, 2026
20 requires that air carriers be within five (5) percent of 11.8 MAP (i.e., 11.21 MAP) in
21 any one calendar year during the January 1, 2021 through December 31, 2025
timeframe. If the operational levels are not equal to or greater than 11.21 MAP during
that timeframe, then the MAP level shall only increase to 12.2 MAP beginning on
January 1, 2026.

Exhibit A

1 previous schedule of operations of the airline, test or demonstration flights authorized
2 in advance by the airport director, or charter flights by persons not engaged in regularly
3 scheduled commercial service at JWA.

4 17. "Class A Aircraft" means aircraft which: (i) operate at gross takeoff
5 weights at JWA not greater than the maximum permitted gross takeoff weight for the
6 individual aircraft main landing gear configuration, as set forth in the text of Section
7 2.27 of the Plan (defined below), as amended through November 8, 2011; and which
8 (ii) generate actual energy-averaged single event noise exposure levels ("SENEL"),
9 averaged during each Noise Compliance Period, as measured at the Departure
10 Monitoring Stations, which are not greater than the values:

NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
NMS1S:	101.8 dB SENEL
NMS2S:	101.1 dB SENEL
NMS3S:	100.7 dB SENEL
NMS4S:	94.1 dB SENEL
NMS5S:	94.6 dB SENEL
NMS6S:	96.1 dB SENEL
NMS7S:	93.0 dB SENEL

19
20 In determining whether an aircraft is a Class A aircraft, its noise performance at
21 the Departure Monitoring Stations shall be determined at each individual station, and

Exhibit A

1 the aircraft must meet each of the monitoring station criteria, without “trade-offs,” in
2 order to qualify as a Class A aircraft.

3 18. “Class E Aircraft” means aircraft which: (i) operate at gross takeoff
4 weights at JWA not greater than the maximum permitted gross takeoff weight for the
5 individual aircraft main landing gear configuration, as set forth in the text of Section
6 2.27 of the Plan, as amended through November 8, 2011; and which (ii) generate actual
7 energy averaged SENEL levels, averaged during each Noise Compliance Period, as
8 measured at the Departure Monitoring Stations, which are not greater than the values:

NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
NMS1S:	93.5 dB SENEL
NMS2S:	93.0 dB SENEL
NMS3S:	89.7 dB SENEL
NMS4S:	86.0 dB SENEL
NMS5S:	86.6 dB SENEL
NMS6S:	86.6 dB SENEL
NMS7S:	86.0 dB SENEL

17
18 In determining whether an aircraft is a Class E Aircraft, its noise performance at
19 the Departure Monitoring Stations shall be determined at each individual noise
20 monitoring station, and the aircraft must meet each of the noise monitoring station
21 criteria, without “trade-offs,” in order to qualify as a Class E Aircraft.

Exhibit A

1 19. “Commercial Air Carrier” or “Air Carrier” means any person other than a
2 Commuter Air Carrier or Commuter Cargo Carrier who operates Regularly Scheduled
3 Air Service into and out of JWA for the purpose of carrying passengers, freight, cargo,
4 or for any other commercial purpose. For purposes of the Plan, Commercial Air Carrier
5 includes all Commercial Cargo Carriers.

6 20. “Commercial Cargo Carrier” means any person which is an Air Carrier,
7 but which conducts its operations at JWA solely for the purpose of carrying
8 Commercial Cargo with aircraft, regularly configured with zero (0) passenger seats
9 available to the general public, and which does not offer passenger service to the public
10 in connection with its operations at JWA.

11 21. “Commuter Air Carrier” or “Commuter Carrier” means any person who:
12 (i) operates Regularly Scheduled Air Service into and out of JWA for the purpose of
13 carrying passengers, freight, cargo, or for any other commercial purpose; (ii) with Class
14 E Aircraft regularly configured with not more than seventy (70) passenger seats; and
15 (iii) operating at gross take-off weights of not more than ninety thousand (90,000)
16 pounds. For the purposes of the Plan, Commuter Air Carrier includes all Commuter
17 Cargo Carriers.

18 22. “Commuter Cargo Carrier” means any person which is a Commuter Air
19 Carrier, but which conducts its operations at JWA solely for the purpose of carrying
20 Commercial Cargo with aircraft regularly configured with zero (0) passenger seats
21

Exhibit A

1 available to the general public, and which does not offer passenger service to the public
2 in connection with its operations at JWA.

3 23. "Departure Monitoring Stations" means JWA noise monitoring stations
4 NMS1S, NMS2S, NMS3S, NMS4S, NMS5S, NMS6S and NMS7S.

5 24. "EIR 617 Project" means the flight, passenger and loading bridge
6 increases authorized by this Amended Stipulation together with the mitigation measures
7 adopted by the Board pursuant to Resolution No. 14-088, adopted on September 30,
8 2014.

9 25. "MAP" means million annual passengers, consisting of the sum of actual
10 deplaning and enplaning passengers served by all Commercial and Commuter Air
11 Carriers at JWA during each Plan Year, except that it does not include passengers
12 excluded from such calculations under relevant provisions of the Plan.

13 26. "Noise Compliance Period" means each calendar quarter during the
14 Project Period.

15 27. "Plan" means the Phase 2 Commercial Airline Access Plan and Regulation
16 for John Wayne Airport, Orange County, and any successor regulations or amendments
17 to the Plan.

18 28. "Plan Year" means the period from January 1 to December 31 of each
19 calendar year.

20 29. "Project Period" means the period from February 26, 1985 to December
21 31, 2030. Notwithstanding the foregoing, the Settling Parties agree that none of the

Exhibit A

1 limits on operations or facilities contained in this Amended Stipulation will expire at
2 the end of the Project Period absent affirmative action by the Board of Supervisors of
3 Orange County, taken in accordance with CEQA and other applicable laws, that is
4 intended to alter the limits.

5 30. "Regularly Scheduled Air Service" means all operations conducted by
6 Regularly Scheduled Commercial Users at JWA.

7 31. "Regularly Scheduled Commercial User" means any person conducting
8 aircraft operations at JWA for the purpose of carrying passengers, freight or cargo
9 where: (i) such operations are operated in support of, advertised, or otherwise made
10 available to members of the public by any means for commercial air transportation
11 purposes, and members of the public may travel or ship Commercial Cargo on the
12 flights; (ii) the flights are scheduled to occur, or are represented as occurring (or
13 available) at specified times and days; and (iii) the person conducts, or proposes to
14 operate, departures at JWA at a frequency greater than two (2) times per week during
15 any consecutive three (3) week period.

16 32. "Regulated ADDs" means average daily departures by Class A aircraft
17 operated by Commercial Air Carriers. Supplemental Class A Authorized Departures, as
18 defined in Section 4.0 of the Plan, are also "Regulated" within the meaning of this
19 section.

20 33. "RON" means any aircraft operated by a Qualified Air Carrier or Qualified
21 Commuter Carrier which "remains overnight" at JWA.

1 **IV. STIPULATION FOR MODIFICATION OF EXISTING JUDGMENT**

2 In recognition and consideration of the foregoing recitals and definitions, the
3 Settling Parties agree to this Amended Stipulation and for a related and conforming
4 Modified Final Judgment of the Court that contains the terms stated below.

5 **A. FLIGHT AND MAP LIMITS**

6 34. Prior to January 1, 2021, there shall be a maximum of eighty-five (85)
7 Commercial Air Carrier Class A ADDS and four (4) Commercial Cargo Air Carrier
8 Class A ADDs serving JWA.

9 35. No aircraft generating noise levels greater than that permitted for Class A
10 aircraft shall be permitted to engage in Regularly Scheduled Air Service at JWA.

11 36. Prior to January 1, 2021, JWA shall serve no more than 10.8 MAP during
12 any Plan Year.

13 37. Beginning January 1, 2021 through December 31, 2030, there shall be a
14 maximum of ninety-nine (99) Class A ADDs allocated to Regularly Scheduled
15 Commercial Air Carriers.

16 38. Four (4) of the ninety-nine (99) Class A ADDs permitted under Paragraph
17 37 above shall be designated as Commercial Cargo Class A ADDs and shall be
18 allocated to Commercial Cargo Carriers to the extent demand exists. A maximum of
19 two (2) of the four (4) Commercial Cargo Class A ADDs may be allocated by the
20 County to Commercial Air Carriers for any Plan Year in which the demand for such
21 flights by Commercial Cargo Air Carriers is less than four (4) ADDs.

1 39. Beginning on January 1, 2021 through December 31, 2025, JWA shall
2 serve no more than 11.8 MAP during any Plan Year. Beginning on January 1, 2026
3 through December 31, 2030, JWA shall serve no more than 12.2 or 12.5 MAP during
4 any Plan Year.³

5 **B. FACILITY CONSTRAINTS**

6 40. Prior to January 1, 2021, there shall be a maximum of twenty (20) loading
7 bridges in use at JWA. Each loading bridge may serve no more than one (1) flight at a
8 time.

9 41. Beginning January 1, 2021 through December 31, 2030, there shall be no
10 limit on the number of loading bridges in use at JWA.

11 42. During the term of this Amended Stipulation (through December 31,
12 2030), all air carrier aircraft regularly configured with ninety (90) or more passenger
13 seats shall load and unload passengers only through the loading bridges in use at JWA,
14 except that:

15 (a) Through December 31, 2030, arriving air carrier aircraft regularly
16 configured with ninety (90) or more passenger seats may unload passengers by stairway
17 or other means not involving the use of loading bridges (hardstands) as (i) the Airport
18 Director or his designee reasonably deems necessary to accommodate arriving
19 commercial aircraft operations, and (ii) only to the extent that the total of the number of
20 arriving, hardstand positions does not exceed two (2) positions;

21 ³ See, supra, footnote 2.

Exhibit A

1 (b) Air Carrier aircraft regularly configured with ninety (90) or more
2 passenger seats may load and unload passengers by stairway or other means not
3 involving the use of loading bridges as the Airport Director reasonably deems
4 necessary to accommodate commercial aircraft operations authorized by this Amended
5 Stipulation during periods when construction and maintenance activities at or on the
6 commercial terminal, terminal apron or proximate taxiways temporarily precludes or
7 impairs the use of any loading bridges;

8 (c) Air Carrier aircraft regularly configured with ninety (90) or more
9 passenger seats may load and unload passengers by stairway or other means not
10 involving the use of loading bridges as the Airport Director reasonably deems
11 necessary to accommodate temporarily commercial aircraft operations authorized by
12 this Amended Stipulation during any airport or airfield emergency condition which
13 precludes or impairs the regular use of any loading bridges; and

14 (d) Air Carrier aircraft regularly configured with ninety (90) or more
15 passenger seats may load and unload passengers by stairway or other means not
16 involving the use of loading bridges as the Airport Director reasonably deems
17 necessary to accommodate commercial aircraft operations authorized by this Amended
18 Stipulation during any period where compliance with safety or security directives of
19 any federal agency with lawful jurisdiction over airport operations or activities
20 [including, but not necessarily limited to, the FAA and the Transportation Security

21

1 Agency ("TSA")] imposes or adopts any safety or security directive or requirement that
2 impairs the full and effective utilization of the loading bridges at JWA.

3 **C. OTHER STIPULATED PROVISIONS**

4 43. The existing curfew regulations and hours of operation for JWA, contained
5 in County Ordinance 3505, and the provisions of paragraph 4, at page 62, of Board of
6 Supervisors' Resolution 85-255 (February 26, 1985), reducing the curfew exemption
7 threshold to 86.0 dB SENEL, shall remain in effect for no less than five (5) years past
8 the end of the Project Period. Nothing in this paragraph precludes or prevents the JWA
9 Airport Director, his designated representative, or some other person designated by the
10 Board, from exercising reasonable discretion in authorizing a regularly scheduled
11 departure or landing during the curfew hours where: (1) such arrival or departure was
12 scheduled to occur outside of the curfew hours; and (2) the arrival or departure has
13 been delayed because of mechanical problems, weather or air traffic control delays, or
14 other reasons beyond the control of the operator. In addition, this paragraph does not
15 prohibit authorization of bona fide emergency or mercy flights during the curfew hours
16 by aircraft that would otherwise be regulated by the curfew provisions and limitations.

17 44. In mitigation of the EIR 508/EIS Project, and for other reasons, the County
18 adopted a "General Aviation Noise Ordinance" ("GANO") (County Ordinance 3505).
19 One principal policy objective of the GANO is to exclude from operations at JWA
20 general aviation aircraft that generate noise levels greater than the noise levels
21 permitted for aircraft used by Commercial Air Carriers. During the Project Period, the

Exhibit A

1 County shall maintain in effect an ordinance that meets this basic policy objective.
2 Nothing in this Amended Stipulation precludes the County from amending the GANO
3 to enhance or facilitate its reasonable achievement of its principal purpose, or the
4 effective enforcement of its provisions.

5 45. During the Project Period, the City, SPON, AWG, their agents, attorneys,
6 officers, elected officials and employees agree that they will not challenge, impede or
7 contest, by or in connection with litigation, or any adjudicatory administrative
8 proceedings, or other action, the funding, implementation or operation of the EIR 617
9 Project, or any facilities that are reasonably related to implementation of the EIR 617
10 Project at JWA, by the County and the United States; nor will they urge other persons
11 to do so, or cooperate in any such efforts by other parties except as may be expressly
12 required by law. Nothing in this paragraph prohibits the Settling Parties from
13 submitting comments or presenting testimony regarding any future environmental
14 documentation prepared by the County with respect to implementation of the EIR 617
15 Project.

16 46. The Settling Parties recognize that it is in the best interests of each of them
17 and in furtherance of the interests, health, welfare and safety of the citizens of Orange
18 County that any potential disputes, controversies or claims with respect to the growth
19 and expansion of JWA through the Project Period be resolved in accordance with the
20 terms and conditions of this Amended Stipulation and the Modified Final Judgment.
21 This Amended Stipulation does not constitute an admission of the sufficiency or

Exhibit A

1 insufficiency of any claims, allegations, assertions, contentions or positions of any
2 other party, or the sufficiency or insufficiency of the defenses of any such claims,
3 allegations, contentions or positions.

4 47. Upon execution of this Amended Stipulation, the Settling Parties, their
5 agents, officers, directors, elected officials and employees each agree to release, acquit
6 and forever discharge each other, their heirs, employees, officials, directors,
7 supervisors, consultants and successors-in-interest from any and all claims, actions,
8 lawsuits, causes of action, liabilities, demands, damages, costs, attorneys' fees and
9 expenses which may arise from or concern the subject matter of this Amended
10 Stipulation, including, but not limited to, the legal adequacy of EIR 617, the legal
11 adequacy of the terms and conditions for the modification of the 1985 Settlement
12 Agreement and confirming judgment, and/or the legal adequacy of any of the
13 amendments to the Plan through the Project Period. Nothing in this release shall limit in
14 any way the ability of any Settling Party to enforce the terms, conditions and provisions
15 of this Amended Stipulation and the Modified Final Judgment.

16 48. All Settling Parties to this Amended Stipulation specifically acknowledge
17 that they have been informed by their legal counsel of the provisions of section 1542 of
18 the California Civil Code, and they expressly waive and relinquish any rights or
19 benefits available to them under this statute, except as provided in this Amended
20 Stipulation. California Civil Code section 1542 provides:

21

Exhibit A

1 A general release does not extend to claims which the creditor does not
2 know or suspect to exist in his or her favor at the time of executing the
3 release, which if known by him or her must have materially affected his or
4 her settlement with the debtor.

5 Notwithstanding section 1542 of the California Civil Code, or any other statute
6 or rule of law of similar effect, this Amended Stipulation shall be given its full force
7 and effect according to each and all of its express terms and provisions, including those
8 related to any unknown or unsuspected claims, liabilities, demands or causes of action.
9 All parties to this Amended Stipulation have been advised specifically by their legal
10 counsel of the effect of this waiver, and they expressly acknowledge that they
11 understand the significance and consequence of this express waiver of California Civil
12 Code section 1542. This waiver is not a mere recital, but rather forms a material part of
13 the consideration for this Amended Stipulation.

14 49. During the Project Period, the Settling Parties agree that they will jointly
15 defend, using their best efforts, any pending or future litigation, administrative
16 investigation, administrative adjudication, or any similar or related enforcement action
17 or claim against the County related to, or arising from, this Amended Stipulation, or the
18 agreement(s) embodied in this Amended Stipulation, the EIR 617 Project at JWA, or
19 the County's regulations or actions in implementation of, or enforcing limitations upon,
20 the Project. If SPON does not have adequate funds to retain legal counsel, SPON shall
21 be deemed to satisfy the requirements of this paragraph if SPON cooperates with the

Exhibit A

1 other Settling Parties in the litigation or administrative proceeding if, and to the extent,
2 requested by the other Settling Parties.

3 50. During the Project Period, the City (but not SPON or AWG) agrees that it
4 will, at its own expense, reimburse the County for all reasonable attorneys' fees and
5 costs incurred by the County in defending any pending or future litigation,
6 administrative investigation, administrative adjudication, or any similar or related
7 enforcement action or claim against the County challenging: the legality of this
8 Amended Stipulation or the agreement embodied in this Amended Stipulation, the EIR
9 617 Project, the authority of the County to approve or use any facilities generally
10 consistent with, and reasonably related to, implementation of the EIR 617 Project at
11 JWA, or the County's regulations in implementation of, or enforcing limitations upon,
12 the Project. The City's obligations pursuant to this paragraph do not extend to any
13 litigation or enforcement action initiated against the County by any other Settling Party
14 alleging a breach by the County of this Amended Stipulation. Reasonable costs include,
15 but are not limited to, the costs of retaining experts or consultants to provide legal
16 counsel, the costs of preparing documents for introduction in any litigation,
17 administrative investigation, administrative adjudication, or any similar or related
18 enforcement action or claim, or to assist legal counsel, the costs of reproducing any
19 document, and reasonable expenses such as transportation, meals, lodging and
20 communication incurred in attending meetings or proceedings related to litigation or
21 administrative proceedings. The County shall be obligated to defend, using its best

Exhibit A

1 efforts, any litigation, administrative challenge or enforcement proceeding related to
2 this Amended Stipulation. In recognition of the County's obligation to defend using its
3 best efforts, the County shall have full discretion to select counsel, experts or other
4 professionals to represent or advise it in respect of any such matters. The City shall
5 reimburse the County for all reasonable litigation or administrative attorneys' fees or
6 costs within thirty (30) days after an invoice is submitted to the City for reimbursement.
7 The rights and obligations set forth in this paragraph shall survive the termination or
8 expiration of this Amended Stipulation.

9 51. The Settling Parties acknowledge that the County intends, in the near
10 future, to develop amendments to the current Plan and/or other airport regulations
11 relative, among other issues, to the manner in which the County allocates Class A
12 ADDs and exempt aircraft operating opportunities within the MAP level agreed to in
13 this Amended Stipulation. The development and implementation of amendments to the
14 Plan was contemplated by, and is considered an element of, all of the Scenarios
15 evaluated in EIR 617, and the parties agree that no additional or further environmental
16 documentation is required under CEQA or NEPA to allow the County to develop or
17 implement the amendments.

18 52. Any notices given under this Amended Stipulation shall be addressed to
19 the parties as follows:
20
21

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

FOR THE COUNTY: Paul M. Albarian
Deputy County Counsel
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626

with a copy to: Lori D. Ballance
Danielle K. Morone
Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, California 92009

FOR THE CITY: Aaron C. Harp
City Attorney
100 Center Civic Drive
Newport Beach, California 92660

FOR AWG: Barbara Lichman
Buchalter Nemer
18400 Von Karman Avenue, Suite 800
Irvine, California 92612

FOR SPON: Steven M. Taber
Taber Law Group PC
P.O. Box 60036
Irvine, California 92602

Any party may, at any time during the Project Period, change the person designated to receive notices under this Amended Stipulation by giving written notice of the change to the other parties.

V. ENFORCEMENT OF THE JUDGMENT

53. If a dispute arises concerning the interpretation of, or a Settling Party's compliance with, the Modified Final Judgment, and if no exigent circumstances require immediate court proceedings, any Settling Party interested in the interpretation or

1 compliance shall provide written notice of the dispute to the other Settling Parties.
2 Within twenty-one (21) days of the sending of such notice, the parties shall meet in
3 person (or by their authorized representatives) and attempt in good faith to resolve the
4 dispute.

5 54. If a dispute has not been resolved within thirty-five (35) days after the
6 sending of written notice, or if exigent circumstances require immediate court
7 proceedings, any Settling Party may initiate enforcement proceedings in this action. A
8 Settling Party seeking to compel another Settling Party to obey the Modified Final
9 Judgment must file a Motion to Enforce Judgment. The Settling Parties agree not to
10 resort to, request, or initiate proceedings involving the contempt powers of the Court in
11 connection with a Motion to Enforce Judgment.

12 55. If the Court determines that a Settling Party is not complying with the
13 Modified Final Judgment, the Court shall issue an order, in the nature of specific
14 performance of the Modified Final Judgment, requiring the defaulting party to comply
15 with the Modified Final Judgment within a reasonable period of time. If the defaulting
16 party fails to comply with the order, any other Settling Party may then seek
17 enforcement under any authorized processes of the Court.

18 **VI. TERM OF AGREEMENT**

19 56. This Amended Stipulation is contingent upon the Court's entry of the
20 Modified Final Judgment such that the obligations, duties and rights of the parties are
21 only those that are contained within this Amended Stipulation amending the terms and

Exhibit A

1 conditions of the 1985 Settlement Agreement. If the Modified Final Judgment is not
2 entered, this Amended Stipulation shall be null and void, and shall not be admissible
3 for any purpose. Unless the Modified Final Judgment is vacated at an earlier date in the
4 manner described in paragraphs 57 through 61, this Amended Stipulation and Modified
5 Final Judgment shall remain in full force and effect during the Project Period.

6 57. The City, SPON and/or AWG may, after consultation with one another,
7 file a Motion to Vacate Judgment if, in any action that they have not initiated:

8 (a) Any trial court enters a final judgment that determines that the limits on
9 the number of: (i) Regulated Class A ADDs; (ii) MAP levels; or (iii) facilities
10 improvements contained in this Amended Stipulation or the curfew provisions of
11 paragraphs 43 and 44 of this Amended Stipulation are unenforceable for any reason,
12 and any of these stipulated limitations are exceeded;

13 (b) Any trial court issues a preliminary injunction that has the effect of
14 precluding implementation or enforcement of the limits on the number of Regulated
15 Class A ADDs, MAP levels or facilities improvements contained in this Amended
16 Stipulation or the curfew provisions of paragraphs 43 and 44 of this Amended
17 Stipulation based upon a finding of a probability of making at trial any of the
18 determinations described in subparagraph (a) above, and such preliminary injunction
19 remains in effect for a period of one (1) year or more, and any of these stipulated
20 limitations are exceeded; or

21

Exhibit A

1 (c) Any appellate court issues a decision or order that makes any of the
2 determinations described in subparagraphs (a) or (b) above, or affirms a trial court
3 ruling based upon such a determination, and any of these stipulated limitations are
4 exceeded.

5 58. The County may file a Motion to Vacate Judgment if:

6 (a) The City, SPON or AWG fail to comply with the provisions of paragraph
7 45 of this Amended Stipulation;

8 (b) A trial or appellate court issues an order that has the effect of prohibiting
9 the County from implementing or enforcing any of the operational restrictions or
10 facilities limitations required by this Amended Stipulation; or

11 (c) The FAA, or any successor agency, withholds federal grant funds from the
12 County, or declines to permit the County to impose or use passenger facility charges at
13 JWA based on a determination by the FAA that the adoption or implementation of all
14 or a portion of this Amended Stipulation is illegal or unconstitutional as a matter of
15 federal law, and (i) the FAA has issued an order or other determination to that effect
16 which is subject to judicial review; and (ii) the County has, using reasonable efforts,
17 been unable to secure a judicial order overruling or vacating the FAA order or other
18 determination.

19 This provision shall not apply to activities expressly permitted by paragraph 45
20 of this Amended Stipulation.

21

Exhibit A

1 59. Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, the Court
2 shall, after consideration of a motion to vacate judgment, enter an order vacating the
3 Modified Final Judgment if the Court determines that any of the conditions described in
4 paragraphs 57 or 58 have occurred. Once vacated, the Modified Final Judgment and
5 this Amended Stipulation shall be null and void, unenforceable and inadmissible for
6 any purpose, and the Settling Parties will, pursuant to paragraph 60, be deemed to be in
7 the same position that they occupied before the Modified Final Judgment and this
8 Amended Stipulation were executed and approved, and the Settling Parties shall have
9 the full scope of their legislative and administrative prerogatives.

10 60. If the Modified Final Judgment is vacated before December 31, 2015, the
11 Settling Parties agree that the original 1985 Settlement Agreement, the original
12 Confirming Judgment and the eight (8) subsequent amendments to the 1985 Settlement
13 Agreement shall remain in full force and effect through December 31, 2015, if, for any
14 reason, all or a portion of this Amended Stipulation is determined to be invalid and the
15 Modified Final Judgment is vacated.

16 61. For the period after December 31, 2015, if any of the events described in
17 paragraphs 57 or 58 occur during the Project Period, this Amended Stipulation and the
18 Modified Final Judgment shall remain in full force and effect with respect to those
19 terms and conditions or portions thereof that are not affected by the event(s) unless the
20 court has granted a motion to vacate judgment pursuant to paragraphs 57 and 58.

21

1 **VII. MODIFICATION**

2 62. The limitations on Regulated Class A ADDs, MAP levels and facilities
3 provided for in this Amended Stipulation, the provisions of paragraphs 43 and 44 of
4 this Amended Stipulation, and the agreements of the City, SPON and AWG not to
5 contest or impede implementation of the EIR 617 Project (paragraph 45 of this
6 Amended Stipulation), are fundamental and essential aspects of this Amended
7 Stipulation, and were agreed upon with full recognition of the possibility that
8 economic, demographic, technological, operational or legal changes not currently
9 contemplated could occur during the Project Period. It was in recognition of these
10 essential aspects of this Amended Stipulation, and the inability to accurately predict
11 certain future conditions that the Settling Parties have agreed to the specific and express
12 provisions of paragraph 57 of this Amended Stipulation. The Settling Parties further
13 acknowledge that this Amended Stipulation provides for the Settling Parties to perform
14 undertakings at different times, and that the performance of certain of the undertakings,
15 once accomplished, could not be undone. Accordingly, except as provided herein, the
16 Settling Parties expressly waive any potential right to seek to modify or vacate the
17 terms of this Amended Stipulation or the Modified Final Judgment, except by written
18 mutual agreement.

19
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Attorneys for Plaintiff and Counterdefendants, the
County of Orange and the Orange County Board of
Supervisors

Nicholas S. Chrisos
County Counsel, County of Orange

Dated: 10-8-2014

By: 
Paul M. Albarian
Deputy County Counsel

Lori D. Ballance
Danielle K. Morone

Dated: _____

By: _____
Lori D. Ballance
Attorneys for Defendant, Counterclaimant and
Crossdefendant, the City of Newport Beach

Aaron C. Harp
City Attorney of Newport Beach

Dated: _____

By: _____
Aaron C. Harp

Attorneys for Defendant, Counterclaimant and
Crossdefendant, Stop Polluting Our Newport
(SPON)

Steven M. Taber

Dated: 09/05/2014

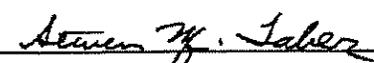
By: 
Steven M. Taber

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Attorneys for Plaintiff and Counterdefendants, the
County of Orange and the Orange County Board of
Supervisors

Nicholas S. Chrisos
County Counsel, County of Orange

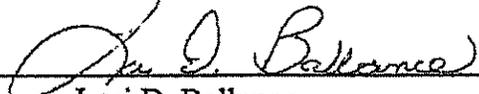
Dated: _____

By: _____

Paul M. Albarian
Deputy County Counsel

Lori D. Ballance
Danielle K. Morone

Dated: 9-9-14

By: 

Lori D. Ballance

Attorneys for Defendant, Counterclaimant and
Crossdefendant, the City of Newport Beach

Aaron C. Harp
City Attorney of Newport Beach

Dated: 10-14-14

By: 

Aaron C. Harp

Attorneys for Defendant, Counterclaimant and
Crossdefendant, Stop Polluting Our Newport
(SPON)

Steven M. Taber

Dated: _____

By: _____

Steven M. Taber

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Attorneys for Defendant, Counterclaimant and
Crossdefendant, Airport Working Group (AWG)

Barbara E. Lichman

Dated: 9/5/14

By: Barbara E. Lichman
Barbara E. Lichman

MODIFIED FINAL JUDGMENT

1
2 1. In 1985, the County of Orange, the City of Newport Beach, Stop Polluting
3 Our Newport, and the Airport Working Group (“Settling Parties”) entered into a
4 Stipulation for Entry of Final Judgment by Certain Settling Parties, settling all pending
5 actions and claims related to the 1985 Master Plan of John Wayne Airport (“JWA”) and
6 related actions (“the 1985 Settlement Agreement”). On December 13, 1985, this Court
7 entered Final Judgment on Stipulation for Entry of Judgment by Certain Settling Parties
8 which accepted the stipulation of the Settling Parties and incorporated certain portions
9 of their stipulation into that judgment. The principal terms of the 1985 Settlement
10 Agreement relate to restrictions and limitations on aircraft operations and commercial
11 passenger facilities.

12 2. In the intervening years, by stipulations of the Settling Parties, orders of
13 the Court have been entered to reflect certain modifications in the agreement of the
14 Settling Parties which were contained in stipulations presented to and approved by the
15 Court. None of these modifications further restricted operations or facilities as
16 compared to the 1985 Settlement Agreement.

17 3. The Settling Parties have now presented to the Court a Ninth Supplemental
18 Stipulation by the County of Orange, California, the City of Newport Beach, Stop
19 Polluting Our Newport, and the Airport Working Group of Orange County, Inc.,
20 Amending the Terms and Conditions of the Previous Stipulations of those Parties

21

1 (“Amended Stipulation”) and Requesting a Modification of an Executory Judgment of
2 the Court and [Proposed] Order.

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

4 A. The Amended Stipulation contains many of the terms of the 1985
5 Settlement Agreement and the eight (8) previous stipulations of the Settling Parties and
6 for clarity and ease of reference, the Amended Stipulation is deemed to contain all of
7 the agreements and obligations of the Settling Parties.

8 B. The provisions of paragraphs 15 through 44 and 53 through 61 of the
9 Amended Stipulation are hereby incorporated as part of this Modified Final Judgment.

10 C. The Settling Parties shall each bear their own costs and attorneys’ fees in
11 connection with the entry of this Modified Final Judgment.

12 **IT IS SO ORDERED.**

13
14 Dated: _____

By: _____
The Honorable Terry J. Hatter, Jr.
United States District Judge

15
16
17
18
19
20
21

Exhibit A

EXHIBIT A

Exhibit A



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

SEP 29 2014

Mr. Alan Murphy
Airport Director
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

RE: John Wayne Airport (JWA) Settlement Agreement Proposed Amendments

Dear Mr. Murphy:

You have asked for advice from the Office of the Chief Counsel, Federal Aviation Administration (FAA), regarding a proposed Ninth Supplemental Stipulation (Ninth Stipulation) that amends prior stipulations that implement the settlement of a dispute between Orange County and the City of Newport Beach, the Airport Working Group, and Stop Polluting Our Newport concerning the development and operation of John Wayne Airport, Orange County (the 1985 Settlement Agreement). You have provided us via electronic mail on September 7, 2014 an undated and unexecuted copy of the Ninth Stipulation that is enclosed herein, and is cited to by "Paragraph" or "Section" number herein.

On December 3, 2002, JWA sought an opinion from FAA on modifications to the 1985 Settlement Agreement that were agreed to by the parties on June 25, 2002, and were intended to take effect in 2003 (the 2003 Amendments). The 2003 Amendments changed certain provisions of the original settlement and extended its term to December 31, 2015. By letter dated December 31, 2002 (copy enclosed), FAA found that the proposed 2003 amendments were exempt from Airport Noise and Capacity Act (ANCA), codified at 49 U.S.C. §§ 47521, et seq., since they would not reduce or limit aircraft operation or affect aircraft safety. FAA also advised that the amendments would not adversely affect future AIP grant applications or applications to impose or collect passenger facility charges (PFC). Letter from James W. Whitlow, Deputy Chief Counsel, FAA, to Alan Murphy, December 31, 2002.

Upon review of the Ninth Stipulation, we understand that it generally authorizes an "increase in permitted operation capacities" at JWA, Paragraph 9(c), and, in particular, implements the following changes:

1. It will impose various flight and Million Annual Passengers ("MAP") limits through December 31, 2030, see, e.g., paragraphs 37 and 39. The Ninth Stipulation also defines a "Project Period" through December 31, 2030, paragraph 29. FAA understands that the current agreements would expire on December 31, 2015.

2. It provides that the existing curfew will remain in effect no less than five years past the end of the Project Period. Paragraph 43. FAA understands that under the current agreements the curfew remains in effect until 2020.
3. It will increase the MAP level served at JWA from 10.8 to 11.8 MAP, beginning on January 1, 2021, through December 31, 2025 (Phase 2), and increase the MAP level served at JWA from 11.8 MAP to 12.2 or 12.5 MAP, beginning on January 1, 2026, through December 31, 2030 (Phase 3). Paragraph 15(b).
4. It will increase the number of regulated flights allocated to "passenger Commercial Carriers" at JWA from 85 Class A average daily departures (ADDs) to 95 Class A ADDs, beginning on January 1, 2021, through December 31, 2030. Paragraph 15(a). Additionally 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. Paragraph 38.
5. Beginning January 1, 2021 through December 31, 2030 there shall be no limit on the number of loading bridges in use at JWA. Paragraph 41.

Our advice is limited to these five proposals and does not apply to any additional term, aspect, information, plan or fact, whether expressly contained within, implied by, or referenced by the Ninth Stipulation or otherwise. Circumstances or facts not encompassed above or that have not been disclosed to FAA or that are contrary to assumptions made herein (both express and implied) could either change FAA's opinion or render it inapplicable. This letter expresses no opinion on prior stipulations or current or past California Environmental Quality Act (CEQA) Environmental Impact Statements or Reports. The FAA expresses no opinion on any document referenced by the Ninth Stipulation, including, but not limited to, Orange County resolutions or ordinances and the Phase 2 Commercial Airline Access Plan and Regulation for JWA, as amended or succeeded.

In FAA's opinion letter of December 31, 2002, which examined the 2003 amendments, FAA made certain findings that remain relevant today. These include:

1. Since JWA had a settlement agreement containing noise and access restrictions in place prior to October 1, 1990, the restrictions in the original 1985 Settlement Agreement are "grandfathered" under ANCA.
2. The seven amendments considered by FAA in 2002 and enumerated in the FAA letter of December 31, 2002, constituted "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety" and is therefore exempt from ANCA and 14 CFR Part 161. 49 U.S.C. § 47524(d)(4), 14 C.F.R. § 161.7(b)(4).
3. FAA's letter of December 31, 2002 compared the proposed 2003 amendments to the conditions that would exist when the Settlement Agreement would otherwise expire ("baseline"). At the point of expiration, FAA concluded that the restrictions of the Settlement Agreement would remain in effect or, in other words, the baseline would be a "continuation of the status quo." This was as opposed to a situation where all restrictions would be considered expired and baseline operations at JWA would be considered unconstrained. Therefore the principal legal effect of expiration of the Settlement Agreement would be to return to the Orange County Board of Supervisors

the full measure of its normal legislative and proprietary discretion to, at a subsequent time, consider and approve modifications to the air carrier facilities, to the level of permitted commercial operations at JWA, or to any other JWA related restriction which is a subject of the Settlement Agreement, subject to CEQA review.

The FAA reached the decision on the baseline based on a number of factors. First, FAA considered the intent and understanding of the County with regard to the continued regulation of access at JWA. FAA found that the County Board "clearly contemplated and intended that access restrictions at JWA would continue after 2005." Second, FAA noted that the restrictions constituted binding mitigation measures related to the airport's 1985 Master Plan project under CEQA, and were thus an ongoing requirement under state environmental law. Third, the FAA noted that to the extent the Board of Supervisors, at a subsequent time, considered and approved, for example, an increase to the number of ADD and MAP being served at the Airport, then the County would have to comply with CEQA and thus such requirements could not be considered to expire automatically.

Because this rationale still holds today and for purposes of consistency, with regard to the proposed amendments at issue here, the FAA will again consider the baseline to be a continuation of the status quo.

Comparing the proposal to the status quo, FAA believes the amendments imposed by the Ninth Stipulation constitute the same type of "relaxation and extension" of the existing conditions that FAA examined in 2002. In this case, all of the changes enhance operating capacity at JWA. As discussed above, the MAP cap increases from 10.8 to 11.8 in Phase 2 and then either 12.2 or 12.5 in Phase 3. The number of regulated flights allocated to passenger Commercial Carriers will increase from 85 Class A ADDs to 95. And beginning 2021, limitations on the number of passenger loading bridges will be dropped. Thus, because the amendments will not "reduce or limit aircraft operations or affect aircraft safety," the amendments (as we understand them and as listed above) are exempt from ANCA. The adoption of such amendments will not adversely affect future County grant applications under the Airport Improvement Program or applications to impose or collect PFCs under 49 U.S.C. § 40117. The proposed amendments do not currently present an issue of noncompliance under the County's grant assurances.

As in 2003, our advice is based on the unique history and circumstances of noise and access restrictions at JWA. For example, since the late 1960s, the County has regulated the use and operations of JWA by a variety of means in an effort to control and reduce any adverse environmental impacts caused by aircraft operations to and from JWA. The original 1985 Settlement Agreement reflects the fact that the County faced extensive litigation as far back as 1968 by individual property owners, the City of Newport Beach, and citizen groups challenging the expansion and operation of JWA.

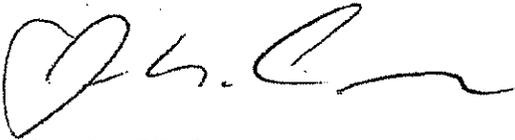
The advice expressed above is not intended to apply to any other airport. Also, there are related issues that are not addressed by this letter, including but not limited to, the County's intended means of allocating Class A ADDs and exempt aircraft operating opportunities within the MAP level agreed to in the Ninth Supplemental Stipulation. This letter is not intended, and should not be construed, as expressing an opinion on the legality under Federal

law, including, but not limited to, the former Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. § 47101, et seq., the County's grant assurances, and the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., of the allocation methodology or the resulting air carrier allocations that may be proposed or implemented by the County under the modified, Amended Settlement Agreement.

The advice stated herein is not binding on FAA and does not constitute a final order of the agency. It is based on an informal and expedited review of an unexecuted draft document. Although it has no current intent or reason to do so, as a matter of FAA's inherent discretion and authority, FAA retains right to modify or withdraw this opinion at any time, or take any action as described in Paragraph 58(c), as warranted and within its sole discretion. The FAA also retains the right to review, docket, and adjudicate a formal complaint filed under 14 C.F.R. part 16 alleging that the County's implementation of the amendments to the Settlement Agreement are inconsistent with the County's grant assurances.

The FAA looks forward to continue working with the County to ensure that its access plan amendments and any future allocation of airport capacity fully comply with Federal law.

Sincerely,



Jonathan W. Cross
Manager, Airport Law
Airport and Environmental
Law Division

Enclosures: Ninth Supplemental Stipulation
Letter from James W. Whitlow, Deputy Chief Counsel,
FAA, to Alan Murphy, December 31, 2002.

1 Nicholas S. Chrisos, County Counsel (Bar No. 70442)
 Paul M. Albarian, Deputy County Counsel (Bar No. 232833)
 2 palbarian@ocair.com
 County of Orange
 3 P.O. Box 1379
 Santa Ana, CA 92702-1379
 4 Telephone: (949) 252-5280
 Facsimile: (949) 252-5044

5 Attorneys for County of Orange
 6 (See next page for additional counsel)

7 **UNITED STATES DISTRICT COURT**
 8 **CENTRAL DISTRICT OF CALIFORNIA**

9	COUNTY OF ORANGE, Plaintiffs,	) Case No. CV 85-1542 TJH (MCx)
10	v.)
11	AIR CALIFORNIA, et al.	) NINTH SUPPLEMENTAL
12	Respondents.	) STIPULATION BY THE COUNTY OF
13	CITY OF NEWPORT BEACH,	) ORANGE, CALIFORNIA, THE CITY
14	Counterclaimant,	) OF NEWPORT BEACH, STOP
15	v.	) POLLUTING OUR NEWPORT, AND
16	COUNTY OF ORANGE; ORANGE	) THE AIRPORT WORKING GROUP
17	COUNTY BOARD OF SUPERVISORS,	) OF ORANGE COUNTY, INC.,
18	and DOES 1 through 1,000, Inclusive,	) AMENDING THE TERMS AND
19	Counterdefendants.	) CONDITIONS OF THE PREVIOUS
20		) STIPULATIONS OF THOSE PARTIES
21		) AND REQUESTING A
		) MODIFICATION OF AN
		) EXECUTORY JUDGMENT OF THE
		) COURT
)
		) AND
)
		) [PROPOSED] ORDER
	AND RELATED COUNTERCLAIMS.)
)

Exhibit A

1 Lori D. Ballance (Bar No. 133469)
lballance@gdandb.com

2 Danielle K. Morone (Bar No. 246831)
dmorone@gdandb.com

3 Gatzke Dillon & Ballance LLP
2762 Gateway Road
4 Carlsbad, California 92009
Telephone: (760) 431-9501
5 Facsimile: (760) 431-9512

6 Attorneys for County of Orange

7 Aaron C. Harp (Bar No. 190665)
aharp@newportbeachca.gov

8 City Attorney
100 Civic Center Drive
9 Newport Beach, California 92660
Telephone: (949) 644-3131
10 Facsimile: (949) 644-3139

11 Attorneys for City of Newport Beach

12 Barbara Lichman (Bar No. 138469)
blichman@buchalter.com
Buchalter Nemer
13 18400 Von Karman Avenue, Suite 800
Irvine, California 92612
14 Telephone: (949) 224-6292
Facsimile: (949) 720-0182

15 Attorneys for Airport Working Group of Orange County, Inc. (AWG)

16 Steven M. Taber (Bar No. 250205)
staber@taberlaw.com

17 Taber Law Group PC
18 P.O. Box 60036
Irvine, California 92602
19 Telephone: (949) 735-8217
Facsimile: (714) 707-4282

20 Attorneys for Stop Polluting Our Newport (SPON)

21

1 **I. BASIS FOR THE "1985 SETTLEMENT AGREEMENT"**

2 1. In November 1985, the County of Orange and the Orange County Board of
3 Supervisors ("Board") (collectively, the "County"), the City of Newport Beach
4 ("City"), Stop Polluting Our Newport ("SPON"), and the Airport Working Group of
5 Orange County, Inc. ("AWG") (City, SPON and AWG are sometimes collectively
6 referred to as "the City"), by their respective counsel of record, entered into a
7 stipulation to implement the settlement of the longstanding dispute between the County
8 and the City concerning the development and operation of John Wayne Airport
9 ("JWA") ("the 1985 Settlement Agreement"). The parties are sometimes collectively
10 referred to in this Ninth Supplemental Stipulation ("Amended Stipulation") as the
11 "Settling Parties."

12 On December 15, 1985, the U.S. District Court entered a final judgment ("the
13 confirming judgment") pursuant to the 1985 Settlement Agreement, which: (1)
14 adjudicated that Environmental Impact Report 508/Environmental Impact Statement
15 ("EIR 508/EIS") was legally adequate for the "EIR 508/EIS Project" (as that term is
16 hereafter defined) under the California Environmental Quality Act ("CEQA"), the
17 National Environmental Policy Act ("NEPA"), and all relevant state and federal
18 implementing regulations; (2) adjudicated that all other claims, controversies and/or
19 counterclaims were dismissed without prejudice; and (3) contained specific provisions
20 for enforcement of the 1985 Settlement Agreement.

21

Exhibit A

1 2. The compromise settlement reached by the Settling Parties reflected, under
2 all of the circumstances, the individual judgments of the Settling Parties regarding an
3 appropriate or acceptable balance between demand for air travel services in Orange
4 County and any adverse environmental effects associated with the operation of JWA.
5 The Settling Parties acknowledge that, without the 1985 Settlement Agreement and
6 confirming judgment, protracted litigation would have continued and created an
7 ongoing risk of impeding or preventing the County's development of JWA, and its
8 ability to create additional access opportunities for commercial operators desiring to
9 use JWA.

10 3. Other provisions of the Settling Parties' agreement included actions that
11 were generally described in, but not implemented directly through, the 1985 Settlement
12 Agreement. Those provisions included actions undertaken by the County in adopting
13 and implementing Resolution Nos. 85-1231, 85-1232 and 85-1233 (all adopted on
14 August 27, 1985) concerning certification of EIR 508/EIS, adoption of additional
15 mitigation measures and additional airport site studies in Orange County, and the
16 parties' dismissal of other litigation concerning JWA.

17 4. In reaching the 1985 Settlement Agreement, the Settling Parties
18 considered operational and other factors applicable to JWA that are not applicable to
19 any other airport. As such, the 1985 Settlement Agreement is site specific to JWA,
20 premised upon its unique history, operational characteristics and limitations.
21 Specifically, the essential character of JWA as an airport facility, both operationally

Exhibit A

1 and environmentally, is defined by the significant and substantial physical and
2 environmental constraints affecting public use of the facility, including, but not limited
3 to, the extremely confined airport area that includes a total of approximately five
4 hundred and four (504) acres, less than four hundred (400) acres of which are available
5 for airfield operations, an extensive highway and local street system that surrounds the
6 area, and residential and commercial areas located generally to the southeast, south,
7 west, southwest, and north of the airport area, and commercial areas to the east of the
8 airport area.

9 5. Regularly scheduled commercial service was first initiated at JWA in
10 1967; and, since the late 1960s, the County has regulated the use and operation of JWA
11 by a variety of means in an effort to control and reduce any adverse environmental
12 impacts caused by aircraft operations to and from JWA. These regulations have
13 included such restrictions as: (i) strict noise-based limitations on the type of aircraft that
14 are permitted to use JWA, including both commercial and general aviation aircraft; (ii)
15 a nighttime "curfew" on aircraft operations exceeding certain specified noise levels;
16 and (iii) limitations on the number of average daily commercial departures which can
17 occur at the facility, either directly or through a limit on the permitted number of annual
18 commercial passengers. Even prior to 1985, the controlled nature of the airport's
19 operation, arising from a wide range of political, environmental, social and economic
20 considerations, had become institutionalized to the extent that the regulated nature of
21 the airport was a definitional component of its character as an air transportation facility.

1 6. The 1985 Settlement Agreement and confirming judgment were not
2 intended to, and did not: (i) create any rights in favor of any persons other than the
3 Settling Parties; or (ii) make the Settling Parties (other than the County) or any other
4 person, parties to, or third party beneficiaries of, any contractual agreement between the
5 County, as airport proprietor of JWA, and the United States of America (or any of its
6 agencies).

7 **II. BASIS OF AMENDMENTS TO THE TERMS AND CONDITIONS**

8 7. Subsequent to execution of the 1985 Settlement Agreement and prior to
9 this Ninth Supplemental Stipulation, the County and other Settling Parties negotiated
10 eight series of amendments to the original agreement, which were filed with this
11 Court. Those eight previous stipulations made various amendments to the provisions of
12 the 1985 Settlement Agreement and reflect a long-standing, collaborative relationship
13 between the County and other Settling Parties. Consistent with historical practice, in
14 January 2012, the County and other Settling Parties initiated discussions regarding the
15 possibility of amending the 1985 Settlement Agreement to extend beyond 2015.

16 8. On April 16, 2013, the Board approved a Memorandum of Understanding
17 (“MOU”)¹ between the County and the Settling Parties pursuant to which the County
18 would act as lead agency (with the City designated a responsible agency) in the

19 ¹ For purposes of evaluating potential amendments to the 1985 Settlement
20 Agreement, the MOU identified a “Proposed Project,” as defined by the operational
21 parameters set forth in Paragraphs 15, 37 through 39, and 41 below, as well as four
alternatives, referred to as the CEQA-mandated No Project Alternative, Alternative A,
Alternative B and Alternative C.

1 preparation of an Environmental Impact Report ("EIR") that would support County and
2 City approval of an operational scenario evaluated in the EIR regarding amendments to
3 the terms and conditions of the 1985 Settlement Agreement concerning restrictions at
4 JWA. This EIR was designated as EIR 617 and was circulated for public review and
5 comment pursuant to and consistent with CEQA (Pub. Resources Code, §21000 et seq.)
6 and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.).

7 9. Final EIR 617 was found complete and adequate under CEQA by the
8 Board of Supervisors on September 30, 2014. On that date, the Board:

9 (a) Certified Final EIR 617 as adequate and complete and as containing all
10 information required by CEQA, the State CEQA Guidelines, and the County Local
11 CEQA Procedures Manual;

12 (b) Adopted the statutorily required Findings, Mitigation Monitoring and
13 Reporting Plan and Statement of Overriding Considerations consistent with CEQA and
14 the State CEQA Guidelines;

15 (c) Approved the Proposed Project, thereby authorizing an increase in
16 permitted operational capacities at levels defined in Paragraphs 15, 37 through 39, and
17 41 below; and,

18 (d) Authorized execution of an Amended Stipulation after its approval and
19 execution by the City, SPON and AWG, and subject to the Airport Director receiving a
20 letter from the Federal Aviation Administration ("FAA") stating that the Amended
21 Stipulation is consistent with federal law.

Exhibit A

1 10. Consistent with the MOU's provisions, EIR 617 evaluated proposed
2 modifications to some of the provisions of the 1985 Settlement Agreement, including
3 an increase in permitted operational capacities and an extension of the term of the
4 agreement. In order to permit the Board and the City to determine the final terms of any
5 amendments to the 1985 Settlement Agreement, the "Proposed Project," and four other
6 alternatives (see, supra, footnote 1), were each evaluated in the EIR to an equivalent
7 level of detail that would permit the County and the City to adopt amendments to the
8 1985 Settlement Agreement consistent with all or a portion of either the Proposed
9 Project or the alternatives.

10 11. On _____, 20__, the City authorized execution of this Amended
11 Stipulation subject to certain conditions, including receipt of the FAA Chief Counsel
12 opinion letter referenced above. On or about _____, 20__, SPON and AWG each
13 authorized execution of this Amended Stipulation subject to conditions similar to those
14 specified by the City and the County.

15 12. All conditions to the execution of this Amended Stipulation by each of the
16 Settling Parties have been satisfied and, a copy of the FAA's letter to the Airport
17 Director, dated _____, 20__, confirming that the Amended Stipulation is consistent
18 with federal law is attached to this Stipulation as "Exhibit A."

19 13. The goals and objectives of the County, as the lead agency, the project
20 proponent and the airport proprietor, in preparing EIR 617 and entering into this
21 Amended Stipulation, included:

1 (a) Modifying some existing restrictions on aircraft operations at JWA in
2 order to provide increased air transportation opportunities to the air-traveling public
3 using JWA without adversely affecting aircraft safety, recognizing that aviation noise
4 management is crucial to continued increases in JWA's capacity;

5 (b) Reasonably protecting the environmental interests and concerns of persons
6 residing in the vicinity of JWA, including their concerns regarding "quality of life"
7 issues arising from the operation of JWA, including but not limited to noise and traffic;

8 (c) Preserving, protecting, and continuing to implement the important
9 restrictions established by the 1985 Settlement Agreement, which were "grandfathered"
10 under the Airport Noise and Capacity Act of 1990 and reflect and accommodate
11 historical policy decisions of the Board regarding the appropriate point of balance
12 between the competing interests of the air transportation and aviation community and
13 local residents living in the vicinity of JWA;

14 (d) Providing a reasonable level of certainty to the following interests
15 regarding the level of permitted aviation activity at JWA for a defined future period of
16 time: surrounding local communities, Airport users (particularly scheduled commercial
17 users), and, the air-traveling public; and,

18 (e) Considering revisions to the regulatory operational restrictions at JWA in
19 light of the current aviation environment, the current needs of the affected
20 communities, and industry interests represented at JWA.

21

Exhibit A

1 These objectives are consistent with a long-standing and adopted policy of the
2 County to operate JWA in a manner that provides the maximum air transportation
3 opportunities at JWA, while ensuring that airport operations do not unreasonably result
4 in adverse environmental effects on surrounding communities.

5 14. Subject to the approval of the Court by entry of a Modified Final Judgment
6 consistent with this Amended Stipulation (“the Modified Final Judgment”), this
7 Amended Stipulation contains all of the obligations of the Settling Parties. The County
8 shall have no obligation to the City, SPON or AWG, nor shall there be any restriction
9 on the discretion of the County in its capacity as airport proprietor of JWA, except as
10 that obligation or restriction is expressly stated in this Amended Stipulation.

11 15. This Amended Stipulation continues the essential terms and conditions of
12 the 1985 Settlement Agreement regarding the County’s development and operation of
13 JWA, with certain capacity enhancing modifications, including:

14 (a) Increasing the number of regulated flights allocated to passenger
15 Commercial Carriers at JWA from eighty-five (85) average daily departures (“ADDs”)
16 to ninety-five (95) ADDs, beginning on January 1, 2021, through December 31, 2030;

17 (b) Increasing the Million Annual Passengers (“MAP”) level served at JWA
18 from 10.8 MAP to 11.8 MAP, beginning on January 1, 2021, through December 31,
19
20
21

1 2025, and increasing the MAP level served at JWA from 11.8 MAP to 12.2 or 12.5
2 MAP,² beginning on January 1, 2026, through December 31, 2030; and,

3 (c) Eliminating the limit on the permitted number of commercial passenger
4 loading bridges at JWA beginning on January 1, 2021.

5 **III. DEFINITIONS**

6 For purposes of this Amended Stipulation and the proposed Modified Final
7 Judgment, the terms below are defined as follows:

8 16. "ADD" means "average daily departure," which is computed on an annual
9 basis from January 1 through December 31 of each calendar year. One ADD authorizes
10 any person requiring ADDs for its operations at JWA to operate 365 (or 366 in any
11 "leap year") authorized departures during each Plan Year, subject to the definitions,
12 provisions, conditions and limitations of this Amended Stipulation and implementing
13 regulations of the County.

14 "ADD" includes all Class A departures, except emergency or mercy flights,
15 departures resulting from mechanical failures, emergency or weather diversions to
16 JWA necessary to reposition an aircraft into its normal scheduling rotation, the
17 repositioning of aircraft to another airport in connection with a published change in the

18 _____
19 ² The trigger for the capacity increase to 12.5 MAP beginning on January 1, 2026
20 requires that air carriers be within five (5) percent of 11.8 MAP (i.e., 11.21 MAP) in
21 any one calendar year during the January 1, 2021 through December 31, 2025
timeframe. If the operational levels are not equal to or greater than 11.21 MAP during
that timeframe, then the MAP level shall only increase to 12.2 MAP beginning on
January 1, 2026.

1 previous schedule of operations of the airline, test or demonstration flights authorized
 2 in advance by the airport director, or charter flights by persons not engaged in regularly
 3 scheduled commercial service at JWA.

4 17. "Class A Aircraft" means aircraft which: (i) operate at gross takeoff
 5 weights at JWA not greater than the maximum permitted gross takeoff weight for the
 6 individual aircraft main landing gear configuration, as set forth in the text of Section
 7 2.27 of the Plan (defined below), as amended through November 8, 2011; and which
 8 (ii) generate actual energy-averaged single event noise exposure levels ("SENEL"),
 9 averaged during each Noise Compliance Period, as measured at the Departure
 10 Monitoring Stations, which are not greater than the values:

NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
NMS1S:	101.8 dB SENEL
NMS2S:	101.1 dB SENEL
NMS3S:	100.7 dB SENEL
NMS4S:	94.1 dB SENEL
NMS5S:	94.6 dB SENEL
NMS6S:	96.1 dB SENEL
NMS7S:	93.0 dB SENEL

19
 20 In determining whether an aircraft is a Class A aircraft, its noise performance at
 21 the Departure Monitoring Stations shall be determined at each individual station, and

1 the aircraft must meet each of the monitoring station criteria, without "trade-offs," in
 2 order to qualify as a Class A aircraft.

3 18. "Class E Aircraft" means aircraft which: (i) operate at gross takeoff
 4 weights at JWA not greater than the maximum permitted gross takeoff weight for the
 5 individual aircraft main landing gear configuration, as set forth in the text of Section
 6 2.27 of the Plan, as amended through November 8, 2011; and which (ii) generate actual
 7 energy averaged SENEL levels, averaged during each Noise Compliance Period, as
 8 measured at the Departure Monitoring Stations, which are not greater than the values:

NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
NMS1S:	93.5 dB SENEL
NMS2S:	93.0 dB SENEL
NMS3S:	89.7 dB SENEL
NMS4S:	86.0 dB SENEL
NMS5S:	86.6 dB SENEL
NMS6S:	86.6 dB SENEL
NMS7S:	86.0 dB SENEL

17
 18 In determining whether an aircraft is a Class E Aircraft, its noise performance at
 19 the Departure Monitoring Stations shall be determined at each individual noise
 20 monitoring station, and the aircraft must meet each of the noise monitoring station
 21 criteria, without "trade-offs," in order to qualify as a Class E Aircraft.

1 19. "Commercial Air Carrier" or "Air Carrier" means any person other than a
2 Commuter Air Carrier or Commuter Cargo Carrier who operates Regularly Scheduled
3 Air Service into and out of JWA for the purpose of carrying passengers, freight, cargo,
4 or for any other commercial purpose. For purposes of the Plan, Commercial Air Carrier
5 includes all Commercial Cargo Carriers.

6 20. "Commercial Cargo Carrier" means any person which is an Air Carrier,
7 but which conducts its operations at JWA solely for the purpose of carrying
8 Commercial Cargo with aircraft, regularly configured with zero (0) passenger seats
9 available to the general public, and which does not offer passenger service to the public
10 in connection with its operations at JWA.

11 21. "Commuter Air Carrier" or "Commuter Carrier" means any person who:
12 (i) operates Regularly Scheduled Air Service into and out of JWA for the purpose of
13 carrying passengers, freight, cargo, or for any other commercial purpose; (ii) with Class
14 E Aircraft regularly configured with not more than seventy (70) passenger seats; and
15 (iii) operating at gross take-off weights of not more than ninety thousand (90,000)
16 pounds. For the purposes of the Plan, Commuter Air Carrier includes all Commuter
17 Cargo Carriers.

18 22. "Commuter Cargo Carrier" means any person which is a Commuter Air
19 Carrier, but which conducts its operations at JWA solely for the purpose of carrying
20 Commercial Cargo with aircraft regularly configured with zero (0) passenger seats
21

Exhibit A

1 available to the general public, and which does not offer passenger service to the public
2 in connection with its operations at JWA.

3 23. "Departure Monitoring Stations" means JWA noise monitoring stations
4 NMS1S, NMS2S, NMS3S, NMS4S, NMS5S, NMS6S and NMS7S.

5 24. "EIR 617 Project" means the flight, passenger and loading bridge
6 increases authorized by this Amended Stipulation together with the mitigation measures
7 adopted by the Board pursuant to Resolution No. ___-___, adopted on September 30,
8 2014.

9 25. "MAP" means million annual passengers, consisting of the sum of actual
10 deplaning and enplaning passengers served by all Commercial and Commuter Air
11 Carriers at JWA during each Plan Year, except that it does not include passengers
12 excluded from such calculations under relevant provisions of the Plan.

13 26. "Noise Compliance Period" means each calendar quarter during the
14 Project Period.

15 27. "Plan" means the Phase 2 Commercial Airline Access Plan and Regulation
16 for John Wayne Airport, Orange County, and any successor regulations or amendments
17 to the Plan.

18 28. "Plan Year" means the period from January 1 to December 31 of each
19 calendar year.

20 29. "Project Period" means the period from February 26, 1985 to December
21 31, 2030. Notwithstanding the foregoing, the Settling Parties agree that none of the

1 limits on operations or facilities contained in this Amended Stipulation will expire at
2 the end of the Project Period absent affirmative action by the Board of Supervisors of
3 Orange County, taken in accordance with CEQA and other applicable laws, that is
4 intended to alter the limits.

5 30. "Regularly Scheduled Air Service" means all operations conducted by
6 Regularly Scheduled Commercial Users at JWA.

7 31. "Regularly Scheduled Commercial User" means any person conducting
8 aircraft operations at JWA for the purpose of carrying passengers, freight or cargo
9 where: (i) such operations are operated in support of, advertised, or otherwise made
10 available to members of the public by any means for commercial air transportation
11 purposes, and members of the public may travel or ship Commercial Cargo on the
12 flights; (ii) the flights are scheduled to occur, or are represented as occurring (or
13 available) at specified times and days; and (iii) the person conducts, or proposes to
14 operate, departures at JWA at a frequency greater than two (2) times per week during
15 any consecutive three (3) week period.

16 32. "Regulated ADDs" means average daily departures by Class A aircraft
17 operated by Commercial Air Carriers. Supplemental Class A Authorized Departures, as
18 defined in Section 4.0 of the Plan, are also "Regulated" within the meaning of this
19 section.

20 33. "RON" means any aircraft operated by a Qualified Air Carrier or Qualified
21 Commuter Carrier which "remains overnight" at JWA.

1 **IV. STIPULATION FOR MODIFICATION OF EXISTING JUDGMENT**

2 In recognition and consideration of the foregoing recitals and definitions, the
3 Settling Parties agree to this Amended Stipulation and for a related and conforming
4 Modified Final Judgment of the Court that contains the terms stated below.

5 **A. FLIGHT AND MAP LIMITS**

6 34. Prior to January 1, 2021, there shall be a maximum of eighty-five (85)
7 Commercial Air Carrier Class A ADDS and four (4) Commercial Cargo Air Carrier
8 Class A ADDs serving JWA.

9 35. No aircraft generating noise levels greater than that permitted for Class A
10 aircraft shall be permitted to engage in Regularly Scheduled Air Service at JWA.

11 36. Prior to January 1, 2021, JWA shall serve no more than 10.8 MAP during
12 any Plan Year.

13 37. Beginning January 1, 2021 through December 31, 2030, there shall be a
14 maximum of ninety-nine (99) Class A ADDs allocated to Regularly Scheduled
15 Commercial Air Carriers.

16 38. Four (4) of the ninety-nine (99) Class A ADDs permitted under Paragraph
17 37 above may be allocated to Commercial Cargo Air Carriers. A maximum of two (2)
18 of the four (4) Commercial Cargo Class A ADDs may be allocated by the County to
19 Commercial Air Carriers for any Plan Year in which the demand for such flights by
20 Commercial Cargo Air Carriers is less than four (4) ADDs.

21

1 39. Beginning on January 1, 2021 through December 31, 2025, JWA shall
2 serve no more than 11.8 MAP during any Plan Year. Beginning on January 1, 2026
3 through December 31, 2030, JWA shall serve no more than 12.2 or 12.5 MAP during
4 any Plan Year.³

5 **B. FACILITY CONSTRAINTS**

6 40. Prior to January 1, 2021, there shall be a maximum of twenty (20) loading
7 bridges in use at JWA. Each loading bridge may serve no more than one (1) flight at a
8 time.

9 41. Beginning January 1, 2021 through December 31, 2030, there shall be no
10 limit on the number of loading bridges in use at JWA.

11 42. During the term of this Amended Stipulation (through December 31,
12 2030), all air carrier aircraft regularly configured with ninety (90) or more passenger
13 seats shall load and unload passengers only through the loading bridges in use at JWA,
14 except that:

15 (a) Through December 31, 2030, arriving air carrier aircraft regularly
16 configured with ninety (90) or more passenger seats may unload passengers by stairway
17 or other means not involving the use of loading bridges (hardstands) as (i) the Airport
18 Director or his designee reasonably deems necessary to accommodate arriving
19 commercial aircraft operations, and (ii) only to the extent that the total of the number of
20 arriving, hardstand positions does not exceed two (2) positions;

21 ³ See, supra, footnote 2.

Exhibit A

1 (b) Air Carrier aircraft regularly configured with ninety (90) or more
2 passenger seats may load and unload passengers by stairway or other means not
3 involving the use of loading bridges as the Airport Director reasonably deems
4 necessary to accommodate commercial aircraft operations authorized by this Amended
5 Stipulation during periods when construction and maintenance activities at or on the
6 commercial terminal, terminal apron or proximate taxiways temporarily precludes or
7 impairs the use of any loading bridges;

8 (c) Air Carrier aircraft regularly configured with ninety (90) or more
9 passenger seats may load and unload passengers by stairway or other means not
10 involving the use of loading bridges as the Airport Director reasonably deems
11 necessary to accommodate temporarily commercial aircraft operations authorized by
12 this Amended Stipulation during any airport or airfield emergency condition which
13 precludes or impairs the regular use of any loading bridges; and

14 (d) Air Carrier aircraft regularly configured with ninety (90) or more
15 passenger seats may load and unload passengers by stairway or other means not
16 involving the use of loading bridges as the Airport Director reasonably deems
17 necessary to accommodate commercial aircraft operations authorized by this Amended
18 Stipulation during any period where compliance with safety or security directives of
19 any federal agency with lawful jurisdiction over airport operations or activities
20 [including, but not necessarily limited to, the FAA and the Transportation Security

21

1 Agency ("TSA")] imposes or adopts any safety or security directive or requirement that
2 impairs the full and effective utilization of the loading bridges at JWA.

3 **C. OTHER STIPULATED PROVISIONS**

4 43. The existing curfew regulations and hours of operation for JWA, contained
5 in County Ordinance 3505, and the provisions of paragraph 4, at page 62, of Board of
6 Supervisors' Resolution 85-255 (February 26, 1985), reducing the curfew exemption
7 threshold to 86.0 dB SENEL, shall remain in effect for no less than five (5) years past
8 the end of the Project Period. Nothing in this paragraph precludes or prevents the JWA
9 Airport Director, his designated representative, or some other person designated by the
10 Board, from exercising reasonable discretion in authorizing a regularly scheduled
11 departure or landing during the curfew hours where: (1) such arrival or departure was
12 scheduled to occur outside of the curfew hours; and (2) the arrival or departure has
13 been delayed because of mechanical problems, weather or air traffic control delays, or
14 other reasons beyond the control of the operator. In addition, this paragraph does not
15 prohibit authorization of bona fide emergency or mercy flights during the curfew hours
16 by aircraft that would otherwise be regulated by the curfew provisions and limitations.

17 44. In mitigation of the EIR 508/EIS Project, and for other reasons, the County
18 adopted a "General Aviation Noise Ordinance" ("GANO") (County Ordinance 3505).
19 One principal policy objective of the GANO is to exclude from operations at JWA
20 general aviation aircraft that generate noise levels greater than the noise levels
21 permitted for aircraft used by Commercial Air Carriers. During the Project Period, the

1 County shall maintain in effect an ordinance that meets this basic policy objective.
2 Nothing in this Amended Stipulation precludes the County from amending the GANO
3 to enhance or facilitate its reasonable achievement of its principal purpose, or the
4 effective enforcement of its provisions.

5 45. During the Project Period, the City, SPON, AWG, their agents, attorneys,
6 officers, elected officials and employees agree that they will not challenge, impede or
7 contest, by or in connection with litigation, or any adjudicatory administrative
8 proceedings, or other action, the funding, implementation or operation of the EIR 617
9 Project, or any facilities that are reasonably related to implementation of the EIR 617
10 Project at JWA, by the County and the United States; nor will they urge other persons
11 to do so, or cooperate in any such efforts by other parties except as may be expressly
12 required by law. Nothing in this paragraph prohibits the Settling Parties from
13 submitting comments or presenting testimony regarding any future environmental
14 documentation prepared by the County with respect to implementation of the EIR 617
15 Project.

16 46. The Settling Parties recognize that it is in the best interests of each of them
17 and in furtherance of the interests, health, welfare and safety of the citizens of Orange
18 County that any potential disputes, controversies or claims with respect to the growth
19 and expansion of JWA through the Project Period be resolved in accordance with the
20 terms and conditions of this Amended Stipulation and the Modified Final Judgment.
21 This Amended Stipulation does not constitute an admission of the sufficiency or

1 insufficiency of any claims, allegations, assertions, contentions or positions of any
2 other party, or the sufficiency or insufficiency of the defenses of any such claims,
3 allegations, contentions or positions.

4 47. Upon execution of this Amended Stipulation, the Settling Parties, their
5 agents, officers, directors, elected officials and employees each agree to release, acquit
6 and forever discharge each other, their heirs, employees, officials, directors,
7 supervisors, consultants and successors-in-interest from any and all claims, actions,
8 lawsuits, causes of action, liabilities, demands, damages, costs, attorneys' fees and
9 expenses which may arise from or concern the subject matter of this Amended
10 Stipulation, including, but not limited to, the legal adequacy of EIR 617, the legal
11 adequacy of the terms and conditions for the modification of the 1985 Settlement
12 Agreement and confirming judgment, and/or the legal adequacy of any of the
13 amendments to the Plan through the Project Period. Nothing in this release shall limit in
14 any way the ability of any Settling Party to enforce the terms, conditions and provisions
15 of this Amended Stipulation and the Modified Final Judgment.

16 48. All Settling Parties to this Amended Stipulation specifically acknowledge
17 that they have been informed by their legal counsel of the provisions of section 1542 of
18 the California Civil Code, and they expressly waive and relinquish any rights or
19 benefits available to them under this statute, except as provided in this Amended
20 Stipulation. California Civil Code section 1542 provides:

21

Exhibit A

1 A general release does not extend to claims which the creditor does not
2 know or suspect to exist in his or her favor at the time of executing the
3 release, which if known by him or her must have materially affected his or
4 her settlement with the debtor.

5 Notwithstanding section 1542 of the California Civil Code, or any other statute
6 or rule of law of similar effect, this Amended Stipulation shall be given its full force
7 and effect according to each and all of its express terms and provisions, including those
8 related to any unknown or unsuspected claims, liabilities, demands or causes of action.
9 All parties to this Amended Stipulation have been advised specifically by their legal
10 counsel of the effect of this waiver, and they expressly acknowledge that they
11 understand the significance and consequence of this express waiver of California Civil
12 Code section 1542. This waiver is not a mere recital, but rather forms a material part of
13 the consideration for this Amended Stipulation.

14 49. During the Project Period, the Settling Parties agree that they will jointly
15 defend, using their best efforts, any pending or future litigation, administrative
16 investigation, administrative adjudication, or any similar or related enforcement action
17 or claim against the County related to, or arising from, this Amended Stipulation, or the
18 agreement(s) embodied in this Amended Stipulation, the EIR 617 Project at JWA, or
19 the County's regulations or actions in implementation of, or enforcing limitations upon,
20 the Project. If SPON does not have adequate funds to retain legal counsel, SPON shall
21 be deemed to satisfy the requirements of this paragraph if SPON cooperates with the

Exhibit A

1 other Settling Parties in the litigation or administrative proceeding if, and to the extent,
2 requested by the other Settling Parties.

3 50. During the Project Period, the City (but not SPON or AWG) agrees that it
4 will, at its own expense, reimburse the County for all reasonable attorneys' fees and
5 costs incurred by the County in defending any pending or future litigation,
6 administrative investigation, administrative adjudication, or any similar or related
7 enforcement action or claim against the County challenging: the legality of this
8 Amended Stipulation or the agreement embodied in this Amended Stipulation, the EIR
9 617 Project, the authority of the County to approve or use any facilities generally
10 consistent with, and reasonably related to, implementation of the EIR 617 Project at
11 JWA, or the County's regulations in implementation of, or enforcing limitations upon,
12 the Project. The City's obligations pursuant to this paragraph do not extend to any
13 litigation or enforcement action initiated against the County by any other Settling Party
14 alleging a breach by the County of this Amended Stipulation. Reasonable costs include,
15 but are not limited to, the costs of retaining experts or consultants to provide legal
16 counsel, the costs of preparing documents for introduction in any litigation,
17 administrative investigation, administrative adjudication, or any similar or related
18 enforcement action or claim, or to assist legal counsel, the costs of reproducing any
19 document, and reasonable expenses such as transportation, meals, lodging and
20 communication incurred in attending meetings or proceedings related to litigation or
21 administrative proceedings. The County shall be obligated to defend, using its best

1 efforts, any litigation, administrative challenge or enforcement proceeding related to
2 this Amended Stipulation. In recognition of the County's obligation to defend using its
3 best efforts, the County shall have full discretion to select counsel, experts or other
4 professionals to represent or advise it in respect of any such matters. The City shall
5 reimburse the County for all reasonable litigation or administrative attorneys' fees or
6 costs within thirty (30) days after an invoice is submitted to the City for reimbursement.
7 The rights and obligations set forth in this paragraph shall survive the termination or
8 expiration of this Amended Stipulation.

9 51. The Settling Parties acknowledge that the County intends, in the near
10 future, to develop amendments to the current Plan and/or other airport regulations
11 relative, among other issues, to the manner in which the County allocates Class A
12 ADDs and exempt aircraft operating opportunities within the MAP level agreed to in
13 this Amended Stipulation. The development and implementation of amendments to the
14 Plan was contemplated by, and is considered an element of, all of the Scenarios
15 evaluated in EIR 617, and the parties agree that no additional or further environmental
16 documentation is required under CEQA or NEPA to allow the County to develop or
17 implement the amendments.

18 52. Any notices given under this Amended Stipulation shall be addressed to
19 the parties as follows:
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

FOR THE COUNTY: Paul M. Albarian
Deputy County Counsel
John Wayne Airport
3160 Airway Avenue
Costa Mesa, California 92626

with a copy to: Lori D. Ballance
Danielle K. Morone
Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, California 92009

FOR THE CITY: Aaron C. Harp
City Attorney
100 Center Civic Drive
Newport Beach, California 92660

FOR AWG: Barbara Lichman
Buchalter Nemer
18400 Von Karman Avenue, Suite 800
Irvine, California 92612

FOR SPON: Steven M. Taber
Taber Law Group PC
P.O. Box 60036
Irvine, California 92602

Any party may, at any time during the Project Period, change the person designated to receive notices under this Amended Stipulation by giving written notice of the change to the other parties.

V. ENFORCEMENT OF THE JUDGMENT

53. If a dispute arises concerning the interpretation of, or a Settling Party's compliance with, the Modified Final Judgment, and if no exigent circumstances require immediate court proceedings, any Settling Party interested in the interpretation or

1 compliance shall provide written notice of the dispute to the other Settling Parties.
2 Within twenty-one (21) days of the sending of such notice, the parties shall meet in
3 person (or by their authorized representatives) and attempt in good faith to resolve the
4 dispute.

5 54. If a dispute has not been resolved within thirty-five (35) days after the
6 sending of written notice, or if exigent circumstances require immediate court
7 proceedings, any Settling Party may initiate enforcement proceedings in this action. A
8 Settling Party seeking to compel another Settling Party to obey the Modified Final
9 Judgment must file a Motion to Enforce Judgment. The Settling Parties agree not to
10 resort to, request, or initiate proceedings involving the contempt powers of the Court in
11 connection with a Motion to Enforce Judgment.

12 55. If the Court determines that a Settling Party is not complying with the
13 Modified Final Judgment, the Court shall issue an order, in the nature of specific
14 performance of the Modified Final Judgment, requiring the defaulting party to comply
15 with the Modified Final Judgment within a reasonable period of time. If the defaulting
16 party fails to comply with the order, any other Settling Party may then seek
17 enforcement under any authorized processes of the Court.

18 **VI. TERM OF AGREEMENT**

19 56. This Amended Stipulation is contingent upon the Court's entry of the
20 Modified Final Judgment such that the obligations, duties and rights of the parties are
21 only those that are contained within this Amended Stipulation amending the terms and

1 conditions of the 1985 Settlement Agreement. If the Modified Final Judgment is not
2 entered, this Amended Stipulation shall be null and void, and shall not be admissible
3 for any purpose. Unless the Modified Final Judgment is vacated at an earlier date in the
4 manner described in paragraphs 57 through 61, this Amended Stipulation and Modified
5 Final Judgment shall remain in full force and effect during the Project Period.

6 57. The City, SPON and/or AWG may, after consultation with one another,
7 file a Motion to Vacate Judgment if, in any action that they have not initiated:

8 (a) Any trial court enters a final judgment that determines that the limits on
9 the number of: (i) Regulated Class A ADDs; (ii) MAP levels; or (iii) facilities
10 improvements contained in this Amended Stipulation or the curfew provisions of
11 paragraphs 43 and 44 of this Amended Stipulation are unenforceable for any reason,
12 and any of these stipulated limitations are exceeded;

13 (b) Any trial court issues a preliminary injunction that has the effect of
14 precluding implementation or enforcement of the limits on the number of Regulated
15 Class A ADDs, MAP levels or facilities improvements contained in this Amended
16 Stipulation or the curfew provisions of paragraphs 43 and 44 of this Amended
17 Stipulation based upon a finding of a probability of making at trial any of the
18 determinations described in subparagraph (a) above, and such preliminary injunction
19 remains in effect for a period of one (1) year or more, and any of these stipulated
20 limitations are exceeded; or

21

Exhibit A

1 (c) Any appellate court issues a decision or order that makes any of the
2 determinations described in subparagraphs (a) or (b) above, or affirms a trial court
3 ruling based upon such a determination, and any of these stipulated limitations are
4 exceeded.

5 58. The County may file a Motion to Vacate Judgment if:

6 (a) The City, SPON or AWG fail to comply with the provisions of paragraph
7 45 of this Amended Stipulation;

8 (b) A trial or appellate court issues an order that has the effect of prohibiting
9 the County from implementing or enforcing any of the operational restrictions or
10 facilities limitations required by this Amended Stipulation; or

11 (c) The FAA, or any successor agency, withholds federal grant funds from the
12 County, or declines to permit the County to impose or use passenger facility charges at
13 JWA based on a determination by the FAA that the adoption or implementation of all
14 or a portion of this Amended Stipulation is illegal or unconstitutional as a matter of
15 federal law, and (i) the FAA has issued an order or other determination to that effect
16 which is subject to judicial review; and (ii) the County has, using reasonable efforts,
17 been unable to secure a judicial order overruling or vacating the FAA order or other
18 determination.

19 This provision shall not apply to activities expressly permitted by paragraph 45
20 of this Amended Stipulation.

21

1 59. Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, the Court
2 shall, after consideration of a motion to vacate judgment, enter an order vacating the
3 Modified Final Judgment if the Court determines that any of the conditions described in
4 paragraphs 57 or 58 have occurred. Once vacated, the Modified Final Judgment and
5 this Amended Stipulation shall be null and void, unenforceable and inadmissible for
6 any purpose, and the Settling Parties will, pursuant to paragraph 60, be deemed to be in
7 the same position that they occupied before the Modified Final Judgment and this
8 Amended Stipulation were executed and approved, and the Settling Parties shall have
9 the full scope of their legislative and administrative prerogatives.

10 60. If the Modified Final Judgment is vacated before December 31, 2015, the
11 Settling Parties agree that the original 1985 Settlement Agreement, the original
12 Confirming Judgment and the eight (8) subsequent amendments to the 1985 Settlement
13 Agreement shall remain in full force and effect through December 31, 2015, if, for any
14 reason, all or a portion of this Amended Stipulation is determined to be invalid and the
15 Modified Final Judgment is vacated.

16 61. For the period after December 31, 2015, if any of the events described in
17 paragraphs 57 or 58 occur during the Project Period, this Amended Stipulation and the
18 Modified Final Judgment shall remain in full force and effect with respect to those
19 terms and conditions or portions thereof that are not affected by the event(s) unless the
20 court has granted a motion to vacate judgment pursuant to paragraphs 57 and 58.

21

1 **VII. MODIFICATION**

2 62. The limitations on Regulated Class A ADDs, MAP levels and facilities
3 provided for in this Amended Stipulation, the provisions of paragraphs 43 and 44 of
4 this Amended Stipulation, and the agreements of the City, SPON and AWG not to
5 contest or impede implementation of the EIR 617 Project (paragraph 45 of this
6 Amended Stipulation), are fundamental and essential aspects of this Amended
7 Stipulation, and were agreed upon with full recognition of the possibility that
8 economic, demographic, technological, operational or legal changes not currently
9 contemplated could occur during the Project Period. It was in recognition of these
10 essential aspects of this Amended Stipulation, and the inability to accurately predict
11 certain future conditions that the Settling Parties have agreed to the specific and express
12 provisions of paragraph 57 of this Amended Stipulation. The Settling Parties further
13 acknowledge that this Amended Stipulation provides for the Settling Parties to perform
14 undertakings at different times, and that the performance of certain of the undertakings,
15 once accomplished, could not be undone. Accordingly, except as provided herein, the
16 Settling Parties expressly waive any potential right to seek to modify or vacate the
17 terms of this Amended Stipulation or the Modified Final Judgment, except by written
18 mutual agreement.

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Attorneys for Plaintiff and Counterdefendants, the
County of Orange and the Orange County Board of
Supervisors

Nicholas S. Chrisos
County Counsel, County of Orange

Dated: _____

By: _____

Paul M. Albarian
Deputy County Counsel

Lori D. Ballance
Danielle K. Morone

Dated: _____

By: _____

Lori D. Ballance
Attorneys for Defendant, Counterclaimant and
Crossdefendant, the City of Newport Beach

Aaron C. Harp
City Attorney of Newport Beach

Dated: _____

By: _____

Aaron C. Harp

Attorneys for Defendant, Counterclaimant and
Crossdefendant, Stop Polluting Our Newport
(SPON)

Steven M. Taber

Dated: _____

By: _____

Steven M. Taber

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Attorneys for Defendant, Counterclaimant and
Crossdefendant, Airport Working Group (AWG)

Barbara E. Lichman

Dated: _____

By: _____

Barbara E. Lichman

MODIFIED FINAL JUDGMENT

1
2 1. In 1985, the County of Orange, the City of Newport Beach, Stop Polluting
3 Our Newport, and the Airport Working Group ("Settling Parties") entered into a
4 Stipulation for Entry of Final Judgment by Certain Settling Parties, settling all pending
5 actions and claims related to the 1985 Master Plan of John Wayne Airport ("JWA") and
6 related actions ("the 1985 Settlement Agreement"). On December 13, 1985, this Court
7 entered Final Judgment on Stipulation for Entry of Judgment by Certain Settling Parties
8 which accepted the stipulation of the Settling Parties and incorporated certain portions
9 of their stipulation into that judgment. The principal terms of the 1985 Settlement
10 Agreement relate to restrictions and limitations on aircraft operations and commercial
11 passenger facilities.

12 2. In the intervening years, by stipulations of the Settling Parties, orders of
13 the Court have been entered to reflect certain modifications in the agreement of the
14 Settling Parties which were contained in stipulations presented to and approved by the
15 Court. None of these modifications further restricted operations or facilities as
16 compared to the 1985 Settlement Agreement.

17 3. The Settling Parties have now presented to the Court a Ninth Supplemental
18 Stipulation by the County of Orange, California, the City of Newport Beach, Stop
19 Polluting Our Newport, and the Airport Working Group of Orange County, Inc.,
20 Amending the Terms and Conditions of the Previous Stipulations of those Parties
21

1 ("Amended Stipulation") and Requesting a Modification of an Executory Judgment of
2 the Court and [Proposed] Order.

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

4 A. The Amended Stipulation contains many of the terms of the 1985
5 Settlement Agreement and the eight (8) previous stipulations of the Settling Parties and
6 for clarity and ease of reference, the Amended Stipulation is deemed to contain all of
7 the agreements and obligations of the Settling Parties.

8 B. The provisions of paragraphs 15 through 44 and 53 through 61 of the
9 Amended Stipulation are hereby incorporated as part of this Modified Final Judgment.

10 C. The Settling Parties shall each bear their own costs and attorneys' fees in
11 connection with the entry of this Modified Final Judgment.

12 **IT IS SO ORDERED.**

13 Dated: _____

By: _____

The Honorable Terry J. Hatter, Jr.
United States District Judge

14
15
16
17
18
19
20
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF SERVICE

I, Lori D. Ballance, hereby certify that on _____, 2014 I caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury that the foregoing is true and correct.

_____, 2014

/s/ Lori D. Ballance
Lori D. Ballance

12/31/02 13:31 FAX

4002



U.S. Department
of Transportation
Federal Aviation
Administration

800 Independence Ave., S.W.
Washington, D.C. 20591

DEC 31 2002

Mr. Alan Murphy
Airport Director
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

Re: John Wayne Airport (JWA) 1985 JWA Settlement Agreement
Proposed Amendments

Dear Mr. Murphy:

This is in response to your December 3, 2002 letter to David G. Leitch, Chief Counsel, Federal Aviation Administration ("FAA"), on behalf of the County of Orange, California ("County"), in which you request the Office of the Chief Counsel's views concerning the consistency of certain proposed amendments to the 1985 John Wayne Airport ("JWA") Settlement Agreement ("the 1985 Settlement Agreement")¹ with the Airport Noise and Capacity Act of 1990 ("ANCA"), recodified at 49 U.S.C. §§ 47521-47533.²

In this letter, we conclude that the proposed amendments to the 1985 Settlement Agreement ("the proposed amendments" or "the modified Amended Settlement Agreement"), a copy of which was attached to your December 3 letter, are exempt from ANCA since the amendments would not "reduce or limit aircraft operations or affect aircraft safety." 49 U.S.C. § 47524(d)(4). We also advise that the FAA will not act to

¹ The 1985 JWA Settlement Agreement is embodied in a Stipulation For Entry of Judgment by Certain Settling Parties filed with the United States District Court, Central District of California in Case No. CV 85-1542 TJH (MCx) and approved by the Honorable Terry J. Hatter, Jr. on December 12, 1985. The settling parties included the County of Orange, California, the City of Newport Beach, California, the Airport Working Group, and Stop Polluting Our Newport.

² We understand, from JWA's August 15, 2002 letter, that the proposed amendments to the 1985 Settlement Agreement will be implemented through amendments to the John Wayne Airport Phase 2 Commercial Airline Access Plan and Regulation ("the Phase 2 Access Plan"). To the extent that the proposed amendments to the 1985 Settlement Agreement also apply to the Phase 2 Access Plan, this letter applies to both documents.

prevent adoption and approval of the terms of the modified Amended Settlement Agreement, either under any transfer or grant agreements, or under the Federal Aviation Act of 1958, as amended ("FAA Act"), and that adoption and approval itself will not adversely affect future County grant applications under the Airport and Airway Improvement Act of 1982, as amended ("AIA") or applications to impose or collect passenger facility charges under 49 U.S.C. § 40117.

The County's December 3, 2002, letter, and prior letters of August 15, 2002, September 6, 2002, September 26, 2002, and November 18, 2002, have provided helpful information concerning the nature and history of noise and access regulations at JWA, the type and extent of aviation facilities and operations at JWA, and the 1985 JWA Settlement Agreement and Phase 2 Access Plan as well as prior and proposed amendments. These letters also point out how the airport is unique in many respects among commercial airports in the United States and describe the terms and conditions of the seven prior amendments³ of the 1985 Settlement Agreement and the proposed amendments.

The proposed amendments and amended court stipulation, as described in the documents you have provided, would continue the essential terms and conditions of the 1985 Settlement Agreement regarding the County's development and operation of JWA, with certain capacity enhancing modifications, including:

- Defining all regulated passenger flights as Class A flights and eliminating the Class AA Aircraft definition/distinction, effective upon execution of a modified final judgment by the court. The definition/distinction for Class E Aircraft is preserved unaffected in the Amended Stipulation;
- Increasing the number of regulated flights allocated to passenger commercial carriers at JWA from 73 average daily departures (ADDs) to 85 ADDs, beginning on January 1, 2003, through December 31, 2015;
- Increasing the level in millions of annual passengers ("MAP") served at the Airport from 8.4 MAP to 10.3 MAP, beginning on January 1, 2003, through December 31,

³ The prior seven amendments to the settlement agreement were implemented for three different categories of changes: all-cargo operations (to increase in average daily departures ("ADDs") to accommodate cargo flights), FAA Advisory Circular AC-91-53A (to increase the safety of departure procedures at JWA), and noise monitoring system upgrades (due to physical relocation of some monitors and improved technology). Most of the seven amendments relate to an extension of the cargo operating capacity since these operations required approval on an annual or bi-annual basis.

- 2010, and increasing the MAP level served at the Airport from 10.3 MAP to 10.8 MAP, beginning on January 1, 2011, through December 31, 2015;
- Continuing to allow the permitted number of operations by Class E Aircraft to be unlimited, except that the combined number of passengers served by commuter aircraft, Class E Aircraft and Class A Aircraft in regularly scheduled commercial service will not exceed 10.3 MAP, beginning on January 1, 2003, through December 31, 2010, and 10.8 MAP, beginning January 1, 2011, through December 31, 2015;
 - Increasing the number of cargo flights from JWA from two Class A ADD cargo flights to a total of four Class A ADD cargo flights, for a total of 89 Class A ADD flights, beginning on January 1, 2003, through December 31, 2015;
 - Providing the passenger commercial carriers with the opportunity to use up to two of the Class A ADD cargo flights if there is no demand for these cargo flights by cargo air carriers; and
 - Increasing the permitted number of commercial passenger loading bridges at JWA from 14 loading bridges to 20 loading bridges, through December 31, 2015, and providing up to two hardstand positions⁴ for aircraft arriving at the Airport.

We understand that none of these changes would reduce or limit aircraft operations from the airport's current levels or affect aircraft safety.

Under Federal law, sponsors of federally-funded airports like the County must comply with the national program for review of airport noise and access restrictions under ANCA before implementing restrictions on operations by Stage 2 and Stage 3 aircraft. Airport noise and access restrictions on operations by Stage 2 aircraft that were proposed on or before October 1, 1990, and by Stage 3 aircraft that were in effect on or before October 1, 1990 are "grandfathered" under ANCA and are therefore not subject to its requirements. 49 U.S.C. §§ 47524(b), 47524(c)(1); 14 C.F.R. § 161.3(a). In addition, certain restrictions are exempt from ANCA, including "a subsequent amendment⁵ to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety." 49 U.S.C. § 47524(d)(4); 14 C.F.R. § 161.7(b)(4).

Since JWA had a settlement agreement containing noise and access restrictions in place prior to October 1, 1990, the restrictions in the original 1985 Settlement Agreement and Phase 2 Access Plan are grandfathered under ANCA. 49 U.S.C. §§ 47524(b), 47524(c)(1); 14 C.F.R. § 161.3(a). Additionally, each of the seven prior amendments to the 1985 Settlement Agreement was "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety" and is therefore exempt from ANCA and Part 161. 49 U.S.C. § 47524(d)(4); 14 C.F.R. § 161.7(b)(4).

⁴ *i.e.*, stair-loading an aircraft on the tarmac when a gate and jetway are not available.

⁵ Although the plain language of §47524(d)(4) states "a" subsequent amendment (and thus could be read to authorize only one amendment per airport), we interpret "a" to mean "any." See *Black's Law Dictionary* 1 (6th ed. 1999), "[t]he word 'a' has varying meanings and uses. 'A' means 'one' or 'any'"

The proposed amendments would extend the terms of the 1985 Settlement Agreement by ten years to December 31, 2015. Both the 1985 Settlement Agreement and the Phase 2 Access Plan note that the limitations on operations and terminal size, among other limitations, "shall end on December 31, 2005," or are in effect for "the period from February 26, 1985 to December 31, 2005." See Resolution Nos. 85-1233, 85-255, 90-1161; Settlement Agreement ¶¶ 20, 27, 29-36, 38. The proposed amendments would extend this expiration date to December 31, 2015. Compared to the current restrictions, the proposed amendments would liberalize air carrier access to JWA.

To determine whether ANCA applies to Orange County's proposal to both relax and extend existing restrictions requires interpretation of 49 U.S.C. § 47524(d)(4). The first inquiry in statutory interpretation is whether a statute speaks clearly and unambiguously to a subject. If so, then the clearly-expressed intent of Congress must be given effect. *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). Section 47524(d)(4) does not explicitly address restrictions in local agreements that have termination clauses and that will continue as part of ongoing mitigation programs under existing state environmental laws as new agreements are developed. Moreover, since ANCA was adopted as part of omnibus Federal budget legislation, its legislative history is sparse and does not provide clear congressional guidance on how restrictions that include expiration dates should be interpreted. Under these circumstances, the FAA has discretion to "fill[] the statutory gap 'in a way that is reasonable in light of the legislature's revealed design.'" *Lopez v. Davis*, 531 U.S. 230, 242 (2001). As the FAA is the administrative agency charged to administer ANCA, its interpretation of the statute will be accorded deference, provided the interpretation is "based on a permissible construction of the statute." *Yellow Transportation, Inc. v. Michigan*, 123 S. Ct. 371, 377 (2002), quoting *Chevron*, *supra*, 467 U.S. at 843. Under the present circumstances, including contemporaneous evidence reflecting the intent and understanding of the County about continued regulation of access at JWA, it is reasonable for the FAA to conclude that the proposed amendments to the 1985 Settlement Agreement to extend the expiration date and relax the existing restrictions on air carrier access do not "reduce or limit aircraft operations" within the meaning of 49 U.S.C. § 47524(d)(4).

For the past 11 years, the FAA has consistently interpreted ANCA to require airports seeking to qualify for exemption under the intergovernmental agreement provisions of ANCA, 49 U.S.C. § 47524(d)(3), to provide evidence that the sought-after restrictions were in effect, in existence, or contemplated at the time of the intergovernmental agreement. Our interpretation of § 47524(d)(4) in these circumstances is consistent with this prior interpretation of a comparable exemption. This is a reasonable interpretation of the statutory language that the FAA was delegated to administer.

As explained in detail below, the County adopted the current airport noise and access restrictions in the Phase 2 Access Plan as binding mitigation measures for the 1985 Master Plan project pursuant to the California Environmental Quality Act ("CEQA"). The County is proposing to extend and relax the current restrictions on air carrier access

at JWA. Where, as here, airport noise and access restrictions fulfill ongoing requirements under state environmental law, it is reasonable to determine the applicability of ANCA to proposed amendments in comparison to continuation of the status quo.

To discern the intent and understanding of the Orange County Board of Supervisors ("County Board" or "Board") regarding the effect of the current expiration date on continuing access regulation at JWA after 2005, we examined the contemporaneous legislative history of noise and access restrictions at JWA, as reflected in various County resolutions and other documents provided to the FAA by representatives of the County. We also reviewed the County's letters to the FAA and the relevant law and regulations.

The following statement in the County Board's resolution certifying the EIR for the 1985 Master Plan project is pertinent in our examination of the history of the settlement agreement:

Any project proposed for JWA must be evaluated in the context of the airport's unique regulatory character and history. JWA is, and has been for many years, a 'controlled' airport facility where operations levels (particularly by commercial operators) are determined not by the available physical facilities, nor the level of 'market demand' for air carrier service, but by the number of ADDs permitted by the County. Based not only on the EIR itself, but on the years of controversy, public hearings, staff reports and other information presented both to this Board and prior Boards on airport related issues, we find that any planning or policy evaluation of JWA which ignores its unique history and operational characteristics must inevitably be misleading.

Resolution No. 85-255 at 8-9.

The legislative history of noise and access restrictions at JWA demonstrates that when the County Board approved the 1985 Master Plan project and adopted the access plans (including the Phase 2 Access Plan) to implement the two phases of the Master Plan (in accordance with the 1985 Settlement Agreement), the County Board clearly contemplated and intended that access restrictions at JWA would continue after 2005. The Board also understood that any further relaxation of these restrictions would require action by the Board, including compliance with CEQA (as the County Board has done for the proposed amendments in Environmental Impact Report ("EIR") 582). Based on information provided by representatives of the County, including the letters dated September 6 and September 26, 2002, we understand that the County Board has an ongoing obligation under CEQA to mitigate the significant adverse impacts of the 1985 Master Plan project, and that this obligation is not affected by the expiration date in the 1985 Settlement Agreement and the Phase 2 Access Plan. In the resolution adopting the Phase 2 Access Plan, the County Board stated that the restrictions in that plan (and its predecessor access plan for Phase 1 of the 1985 Master Plan project) constitute "the single most significant operational mitigation measure" for the project. Resolution No. 90-1161 at 3.

In certifying the final EIR for the 1985 Master Plan project (EIR 508), the Board addressed public comments contending that the project would "inevitably" lead to further future increases in authorized levels of ADDs because of "substantial pressure" on the Board—or future Boards—to increase operations because of a continuing growth of unmet air-traffic demand in Orange County." Resolution No. 85-255 at 10. The County Board responded to these comments as follows:

We cannot speculate on what future Boards of Supervisors may do if they consider future projects of [sic] JWA. Certainly, they will have to comply with CEQA as it then exists. It is, however, by no means clear to us that further increases in ADDs before or after 2005 will even be considered, let alone approved by future Boards.

Id. In the Phase 2 Access Plan, the County Board made clear its intent to amend the Plan "when and as necessary (in the sole and exclusive exercise of the Board's legislative discretion) to effect or maintain the regulatory, environmental and service level goals, policies and objectives of the County in its management and operation of JWA." Phase 2 Access Plan, ¶ 1.7. Evidence of these "goals, policies and objectives" includes the following:

- In certifying the final EIR for the 1985 Master Plan project, the County Board stated that implementation of the project, as mitigated, was "essential to adequately serve the existing and future air traveling public at JWA, and to strike an appropriate, responsible and desirable balance between the community's need for reasonable air transportation services, and the consequences or potential consequences of related airport operations." Resolution No. 85-255 at 5.
- When the Board adopted the Access Plan for the first phase of the 1985 Master Plan project, it "reaffirm[ed] again its consistent and long-standing policies, goals and intent to strike a reasonable balance between the air transportation needs of the citizens of Orange County, and the need to impose reasonable restraints and regulations on the operation of JWA." Resolution No. 85-259 at 4-5.
- In the resolution approving the Phase 2 Access Plan, the Board stated that "the County's ability to continue to effectively regulate the development and use of JWA within the environmental parameters previously established by this Board necessitate the immediate adoption of the [sic] this Phase 2 Access Plan in order to protect the best interests of the County, its constituents and the air travelling public" Resolution No. 90-1161 at 5-6.

The County legislative history shows that the expiration dates in access plans were not intended to discontinue regulation of access; expired plans at JWA have consistently been

either extended or replaced by subsequent plans, up to and including the current Phase 2 Access Plan. See, e.g., Resolution Nos. 85-259, pp. 1-3, and 90-1161 at 3. As part of the 1985 Settlement Agreement, the County Board agreed to lower the maximum MAP in Phase 2 of the Master Plan project to 8.4 MAP and reduce the number of Class A ADDs. In doing so, the County Board found that a reduction in the planned expansion of the terminal and related facilities was "appropriate and economically prudent to create a facility designed to serve the ultimate maximum project service level of 8.4 MAP, and no more . . ." Resolution No. 85-1233 at 5 (emphasis added); see also *id.* at 7 (stating that Phase 2 "refers to the increase in authorized Class A ADD to 73 occurring upon completion of the new facilities, approximately in the year 1990"). Similarly, in adopting the Phase 2 Access Plan the County Board stated:

[T]he 1985 Master Plan and the associated EIR 508/EIS also contemplated as part of the master plan project an increase in the maximum number of permitted commercial flights by regularly scheduled commercial air carriers in order to support the increased passenger handling capacity improvements contemplated by the 1985 Master Plan . . .

Resolution No. 90-1161 at 2 (emphasis added). Thus, the County Board consciously tied the permitted number of commercial flights at JWA in Phase 2 of the 1985 Master Plan project to the approved capacity of the terminal facilities, showing that the Board did not contemplate unrestricted access to the airport after 2005 without a commensurate expansion of terminal capacity.

The 1985 Settlement Agreement provides additional support for this position. It allows any party to move to vacate it and the restrictions it contains if it is held unenforceable for any reason. 1985 Settlement Agreement, ¶ 50. It further specifies that "the parties will be deemed to be in the same situation that they occupied" prior to its execution. *Id.* at ¶ 52. Perhaps the strongest point is that the agreement allows the parties to modify its terms "by mutual agreement." *Id.* at ¶ 53. The modified Amended Settlement Agreement that extends and relaxes restrictions until 2015 is "by mutual agreement" of the parties.

In light of the above analysis, we conclude that the proposed extension of the 2005 expiration date in the 1985 Settlement Agreement to 2015 would not "reduce or limit aircraft operations" for purposes of §47524(d)(4), and that the proposed amendments are exempt from ANCA under that section. We base this conclusion on the unique history and circumstances of noise and access regulation at JWA, as reflected in the documentation provided by the County. For example, the County has continually regulated and enforced maximum permitted noise levels, permitted hours of operation, and maximum number of commercial operations since the inception of commercial service at JWA in 1967. This history supports our finding that the County did not intend for airport restrictions to terminate at the end of the period provided for in 1990. The increased limits introduced by Phase 2 in 1990 were in fact tied to the completion of a terminal expansion project. In addition, the County rejected the alternative of meeting all

passenger and traffic demands in 2005 (*i.e.*, eliminating all restraints at JWA when it adopted the access plan).

As you know, airport access restrictions are also subject to other applicable Federal law in addition to ANCA, including the Airport Improvement Program ("AIP") grant assurances prescribed by 49 U.S.C. §47101, *et seq.* Compliance with the provisions of ANCA does not ensure compliance with other Federal law.

Note that our decision, as indicated above, not to prevent the adoption or approval of the modified Amended Settlement Agreement is based in part on the fact that throughout the process of developing the settlement amendments, the County conducted a significant public process that encouraged and facilitated input from airport users and the public, including the local community and commercial airlines serving JWA, and those desiring to do so, on issues relating to the new capacity authorized by the June 25, 2002 agreement between the County Board, the City of Newport Beach ("City"), Stop Polluting Our Newport ("SPON") and the Airport Working Group ("AWG").

Our decision is also based on the unique history and circumstances of noise and access regulation at JWA. The original 1985 Settlement Agreement reflects the fact that the County faced extensive litigation as far back as 1968 by individual property owners (including noise damage lawsuits by residents of Santa Ana Heights and Newport Beach), the City, and citizen groups challenging the expansion and operation of JWA. During the 1980's as well, the County had also been a defendant in federal court in various suits initiated by air carriers concerning the County's noise and access restrictions. In order to avoid potentially inconsistent and conflicting rulings and obligations, the County initiated an action in federal court resulting in the 1985 Settlement Agreement.

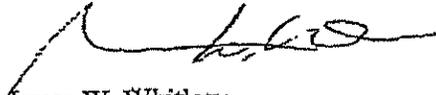
Concerning the application of 49 U.S.C. § 47526, the FAA can also advise that it is satisfied that JWA is not imposing an airport noise or access restriction not in compliance with ANCA or Part 161. As a result, JWA may receive money under the AIP grant program, and impose a passenger facility charge under 49 U.S.C. § 40117. In addition, the FAA will not act to prevent the County's adoption and approval of the proposed amendments as they do not currently present an issue of noncompliance under the County's grant assurances. Thus, that adoption and approval itself would also not adversely affect any applications for AIP grant funds submitted in the future by the County.

The opinions expressed above are not intended, and should not be construed, to apply to any other airport. Also, there are related issues that are not addressed by this letter, in particular the County's intended means of allocating the new capacity authorized by the modified Amended Settlement Agreement. This letter is not intended, and should not be construed, as expressing an opinion on the legality under Federal law, including the AAIAs and the County's grant assurances, and the FAA Act, of the allocation methodology or the resulting air carrier allocations that may be proposed or implemented by the County under the modified Amended Settlement Agreement. The FAA looks

forward to continue working with the County to ensure that Phase 2 Access Plan amendments and any future allocation of airport capacity fully comply with Federal law.

I appreciate the considerable time and effort that representatives of the County have spent in meeting with representatives of the FAA and responding to our inquiries.

Sincerely,



James W. Whitlow
Deputy Chief Counsel
Office of the Chief Counsel

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Gatzke Dillon & Ballance LLP, whose address is 2762 Gateway Road, Carlsbad, California 92009. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on October 15, 2014, I served a copy of the following document(s):

- 1. **NINTH SUPPLEMENTAL STIPULATION BY THE COUNTY OF ORANGE, CALIFORNIA, THE CITY OF NEWPORT BEACH, STOP POLLUTING OUR NEWPORT, AND THE AIRPORT WORKING GROUP OF ORANGE COUNTY, INC., AMENDING THE TERMS AND CONDITIONS OF THE PREVIOUS STIPULATIONS OF THOSE PARTIES AND REQUESTING A MODIFICATION OF AN EXECUTORY JUDGMENT OF THE COURT AND [PROPOSED] ORDER.**

BY U.S. MAIL [Fed. R. Civ. P. 5(b)(2)(C)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Gatzke Dillon & Ballance LLP, 2762 Gateway Road, Carlsbad, CA 92009 in accordance with Gatzke Dillon & Ballance LLP's ordinary business practices.

I am readily familiar with Gatzke Dillon & Ballance LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Gatzke Dillon & Ballance LLP's business practice the document(s) described above will be deposited with the United States Postal Service for collection and mailing on the same date that it (they) is (are) placed at Gatzke Dillon & Ballance LLP with postage thereon fully pre-paid.

Nicholas S. Chrisos, County Counsel
Paul M. Albarian, Deputy County Counsel
County of Orange
P.O. Box 1379
Santa Ana, CA 92702-1379

Attorneys for County of Orange

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Aaron C. Harp (Bar No. 190665)
City Attorney
100 Civic Center Drive
Newport Beach, California 92660

Attorneys for City of Newport Beach

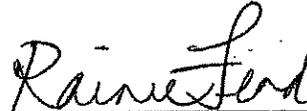
Barbara Lichman
blichman@buchalter.com
Buchalter Nemer
18400 Von Karman Avenue, Suite 800
Irvine, California 92612

Attorneys for Airport Working Group of Orange County, Inc. (AWG)

Steven M. Taber
Taber Law Group PC
P.O. Box 60036
Irvine, California 92602

Attorneys for Stop Polluting Our Newport (SPON)

I declare under penalty of perjury that the foregoing is true and correct. Executed
at Carlsbad, California on October 15, 2014.



Rainee Fend

Exhibit B



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

SEP 29 2014

Mr. Alan Murphy
Airport Director
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

RE: John Wayne Airport (JWA) Settlement Agreement Proposed Amendments

Dear Mr. Murphy:

You have asked for advice from the Office of the Chief Counsel, Federal Aviation Administration (FAA), regarding a proposed Ninth Supplemental Stipulation (Ninth Stipulation) that amends prior stipulations that implement the settlement of a dispute between Orange County and the City of Newport Beach, the Airport Working Group, and Stop Polluting Our Newport concerning the development and operation of John Wayne Airport, Orange County (the 1985 Settlement Agreement). You have provided us via electronic mail on September 7, 2014 an undated and unexecuted copy of the Ninth Stipulation that is enclosed herein, and is cited to by "Paragraph" or "Section" number herein.

On December 3, 2002, JWA sought an opinion from FAA on modifications to the 1985 Settlement Agreement that were agreed to by the parties on June 25, 2002, and were intended to take effect in 2003 (the 2003 Amendments). The 2003 Amendments changed certain provisions of the original settlement and extended its term to December 31, 2015. By letter dated December 31, 2002 (copy enclosed), FAA found that the proposed 2003 amendments were exempt from Airport Noise and Capacity Act (ANCA), codified at 49 U.S.C. §§ 47521, et seq., since they would not reduce or limit aircraft operation or affect aircraft safety. FAA also advised that the amendments would not adversely affect future AIP grant applications or applications to impose or collect passenger facility charges (PFC). Letter from James W. Whitlow, Deputy Chief Counsel, FAA, to Alan Murphy, December 31, 2002.

Upon review of the Ninth Stipulation, we understand that it generally authorizes an "increase in permitted operation capacities" at JWA, Paragraph 9(c), and, in particular, implements the following changes:

1. It will impose various flight and Million Annual Passengers ("MAP") limits through December 31, 2030, see, e.g., paragraphs 37 and 39. The Ninth Stipulation also defines a "Project Period" through December 31, 2030, paragraph 29. FAA understands that the current agreements would expire on December 31, 2015.

2. It provides that the existing curfew will remain in effect no less than five years past the end of the Project Period. Paragraph 43. FAA understands that under the current agreements the curfew remains in effect until 2020.
3. It will increase the MAP level served at JWA from 10.8 to 11.8 MAP, beginning on January 1, 2021, through December 31, 2025 (Phase 2), and increase the MAP level served at JWA from 11.8 MAP to 12.2 or 12.5 MAP, beginning on January 1, 2026, through December 31, 2030 (Phase 3). Paragraph 15(b).
4. It will increase the number of regulated flights allocated to "passenger Commercial Carriers" at JWA from 85 Class A average daily departures (ADDs) to 95 Class A ADDs, beginning on January 1, 2021, through December 31, 2030. Paragraph 15(a). Additionally 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. Paragraph 38.
5. Beginning January 1, 2021 through December 31, 2030 there shall be no limit on the number of loading bridges in use at JWA. Paragraph 41.

Our advice is limited to these five proposals and does not apply to any additional term, aspect, information, plan or fact, whether expressly contained within, implied by, or referenced by the Ninth Stipulation or otherwise. Circumstances or facts not encompassed above or that have not been disclosed to FAA or that are contrary to assumptions made herein (both express and implied) could either change FAA's opinion or render it inapplicable. This letter expresses no opinion on prior stipulations or current or past California Environmental Quality Act (CEQA) Environmental Impact Statements or Reports. The FAA expresses no opinion on any document referenced by the Ninth Stipulation, including, but not limited to, Orange County resolutions or ordinances and the Phase 2 Commercial Airline Access Plan and Regulation for JWA, as amended or succeeded.

In FAA's opinion letter of December 31, 2002, which examined the 2003 amendments, FAA made certain findings that remain relevant today. These include:

1. Since JWA had a settlement agreement containing noise and access restrictions in place prior to October 1, 1990, the restrictions in the original 1985 Settlement Agreement are "grandfathered" under ANCA.
2. The seven amendments considered by FAA in 2002 and enumerated in the FAA letter of December 31, 2002, constituted "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety" and is therefore exempt from ANCA and 14 CFR Part 161. 49 U.S.C. § 47524(d)(4), 14 C.F.R. § 161.7(b)(4).
3. FAA's letter of December 31, 2002 compared the proposed 2003 amendments to the conditions that would exist when the Settlement Agreement would otherwise expire ("baseline"). At the point of expiration, FAA concluded that the restrictions of the Settlement Agreement would remain in effect or, in other words, the baseline would be a "continuation of the status quo." This was as opposed to a situation where all restrictions would be considered expired and baseline operations at JWA would be considered unconstrained. Therefore the principal legal effect of expiration of the Settlement Agreement would be to return to the Orange County Board of Supervisors

the full measure of its normal legislative and proprietary discretion to, at a subsequent time, consider and approve modifications to the air carrier facilities, to the level of permitted commercial operations at JWA, or to any other JWA related restriction which is a subject of the Settlement Agreement, subject to CEQA review.

The FAA reached the decision on the baseline based on a number of factors. First, FAA considered the intent and understanding of the County with regard to the continued regulation of access at JWA. FAA found that the County Board "clearly contemplated and intended that access restrictions at JWA would continue after 2005." Second, FAA noted that the restrictions constituted binding mitigation measures related to the airport's 1985 Master Plan project under CEQA, and were thus an ongoing requirement under state environmental law. Third, the FAA noted that to the extent the Board of Supervisors, at a subsequent time, considered and approved, for example, an increase to the number of ADD and MAP being served at the Airport, then the County would have to comply with CEQA and thus such requirements could not be considered to expire automatically.

Because this rationale still holds today and for purposes of consistency, with regard to the proposed amendments at issue here, the FAA will again consider the baseline to be a continuation of the status quo.

Comparing the proposal to the status quo, FAA believes the amendments imposed by the Ninth Stipulation constitute the same type of "relaxation and extension" of the existing conditions that FAA examined in 2002. In this case, all of the changes enhance operating capacity at JWA. As discussed above, the MAP cap increases from 10.8 to 11.8 in Phase 2 and then either 12.2 or 12.5 in Phase 3. The number of regulated flights allocated to passenger Commercial Carriers will increase from 85 Class A ADDs to 95. And beginning 2021, limitations on the number of passenger loading bridges will be dropped. Thus, because the amendments will not "reduce or limit aircraft operations or affect aircraft safety," the amendments (as we understand them and as listed above) are exempt from ANCA. The adoption of such amendments will not adversely affect future County grant applications under the Airport Improvement Program or applications to impose or collect PFCs under 49 U.S.C. § 40117. The proposed amendments do not currently present an issue of noncompliance under the County's grant assurances.

As in 2003, our advice is based on the unique history and circumstances of noise and access restrictions at JWA. For example, since the late 1960s, the County has regulated the use and operations of JWA by a variety of means in an effort to control and reduce any adverse environmental impacts caused by aircraft operations to and from JWA. The original 1985 Settlement Agreement reflects the fact that the County faced extensive litigation as far back as 1968 by individual property owners, the City of Newport Beach, and citizen groups challenging the expansion and operation of JWA.

The advice expressed above is not intended to apply to any other airport. Also, there are related issues that are not addressed by this letter, including but not limited to, the County's intended means of allocating Class A ADDs and exempt aircraft operating opportunities within the MAP level agreed to in the Ninth Supplemental Stipulation. This letter is not intended, and should not be construed, as expressing an opinion on the legality under Federal

Exhibit B

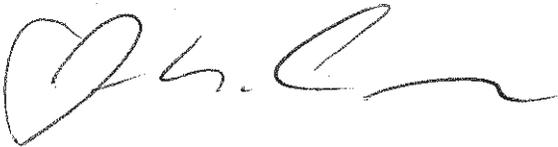
4

law, including, but not limited to, the former Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. § 47101, et seq., the County's grant assurances, and the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., of the allocation methodology or the resulting air carrier allocations that may be proposed or implemented by the County under the modified, Amended Settlement Agreement.

The advice stated herein is not binding on FAA and does not constitute a final order of the agency. It is based on an informal and expedited review of an unexecuted draft document. Although it has no current intent or reason to do so, as a matter of FAA's inherent discretion and authority, FAA retains right to modify or withdraw this opinion at any time, or take any action as described in Paragraph 58(c), as warranted and within its sole discretion. The FAA also retains the right to review, docket, and adjudicate a formal complaint filed under 14 C.F.R. part 16 alleging that the County's implementation of the amendments to the Settlement Agreement are inconsistent with the County's grant assurances.

The FAA looks forward to continue working with the County to ensure that its access plan amendments and any future allocation of airport capacity fully comply with Federal law.

Sincerely,



Jonathan W. Cross
Manager, Airport Law
Airport and Environmental
Law Division

Enclosures: Ninth Supplemental Stipulation
Letter from James W. Whitlow, Deputy Chief Counsel,
FAA, to Alan Murphy, December 31, 2002.