

NEWPORT BEACH CITY COUNCIL AIRPORT POLICY

A. EXECUTIVE SUMMARY

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

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

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

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

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

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

B. HISTORY

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

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

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

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

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

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

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

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

C. LEGAL FRAMEWORK

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

1. Noise Control.

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

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

2. Aircraft Operations & Airport Facilities.

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

3. Interstate Commerce Clause.

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

D. POLICY - SUMMARY

The following components comprise the City's airport policy:

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

E. POLICY

1. Primary Objective

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

2. Considerations

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

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

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

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

3. JWA Settlement Agreement

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

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

4. JWA Facilities & Operations

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

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

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

5. Alternative Transportation Service

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

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

6. Public Agency Support and Participation

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

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

7. Community Involvement

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

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

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

8. Monitoring/Recommendations

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

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

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

Adopted - February 14, 1972

Amended - October 14, 1975

Amended - November 27, 1978

Amended - October 14, 1980

Amended - July 27, 1981

Amended - September 27, 1982

Amended - March 14, 1983

Amended - May 23, 1985

Amended - December 9, 1985

Amended - October 22, 1990

Formerly B-1 and B-2

Adopted - December 13, 1993

Amended - February 27, 1995

Amended - March 22, 1999

Amended - July 25, 2006

Exhibit A

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COUNTY OF ORANGE,

Plaintiff,

v.

AIR CALIFORNIA, *et al.*,

Defendants.

CITY OF NEWPORT BEACH,

Counterclaimant,

v.

COUNTY OF ORANGE; ORANGE COUNTY
BOARD OF SUPERVISORS; and DOES 1
through 1,000, Inclusive,

Counterdefendants.

AND RELATED COUNTERCLAIMS.

) No. CV 85-1542 TJH (MCx)

) EIGHTH 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

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 ("City"), Stop
4 Polluting Our Newport ("SPON"), and the Airport Working Group of Orange County, Inc.
5 ("AWG") (City, SPON and AWG are sometimes collectively referred to as "the City"), by their
6 respective counsel of record, entered into a stipulation to implement the settlement of the
7 longstanding dispute between the County and the City concerning the development and operation
8 of John Wayne Airport, Orange County (SNA) ("JWA") ("the 1985 Settlement Agreement"). The
9 parties are sometimes collectively referred to in this Eighth Supplemental Stipulation ("Amended
10 Stipulation") as the "Settling Parties". On December 15, 1985, the United States District Court
11 entered a final judgment ("the confirming judgment") pursuant to the 1985 Settlement Agreement.
12 The confirming judgment: (1) adjudicated that Environmental Impact Report 508/Environmental
13 Impact Statement ("EIR 508/EIS") was legally adequate for the "EIR 508/EIS Project" (as that
14 term is hereafter defined) under the California Environmental Quality Act ("CEQA"), the National
15 Environmental Policy Act ("NEPA"), and all relevant state and federal implementing regulations;
16 (2) adjudicated that all other claims, controversies and/or counterclaims were dismissed without
17 prejudice; and (3) contained specific provisions for enforcement of the 1985 Settlement
18 Agreement.

19 2. The compromise settlement reached by the Settling Parties reflected, under all of the
20 circumstances, the individual judgments of the Settling Parties regarding an appropriate or
21 acceptable balance between demand for air travel services in Orange County and any adverse
22 environmental effects associated with the operation of JWA. The Settling Parties acknowledge that,
23 without the 1985 Settlement Agreement and confirming judgment, protracted litigation would have
24 continued and created an ongoing risk of impeding or preventing the County's development of

1 JWA, and its ability to create additional access opportunities for commercial operators desiring to
2 use JWA.

3 3. Other provisions of the Settling Parties' agreement included actions that were
4 generally described in, but not implemented directly through, the 1985 Settlement Agreement.
5 Those provisions included actions undertaken by the County in adopting and implementing
6 Resolution Nos. 85-1231, 85-1232 and 85-1233 (all adopted on August 27, 1985) concerning
7 certification of EIR 508/EIS, adoption of additional mitigation measures and additional airport site
8 studies in Orange County, and the parties' dismissal of other litigation concerning JWA.
9

10 4. In reaching the 1985 Settlement Agreement, the Settling Parties considered
11 operational and other factors applicable to JWA that are not applicable to any other airport. The
12 1985 Settlement Stipulation is site specific to JWA, premised upon its unique history, operational
13 characteristics and limitations. Specifically, the essential character of JWA as an airport facility,
14 both operationally and environmentally, is defined by the significant and substantial physical and
15 environmental constraints affecting public use of the facility, including, but not limited to, the
16 extremely confined airport area that includes a total of approximately five hundred and four (504)
17 acres, less than four hundred (400) acres of which are available for airfield operations, an extensive
18 highway and local street system that surrounds the area, and residential and commercial areas
19 located generally to the southeast, south, west, southwest, and north of the airport area, and
20 commercial areas to the east of the airport area.
21

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

8
9 6. The 1985 Settlement Agreement and confirming judgment were not intended to, and
10 did not: (i) create any rights in favor of any persons other than the Settling Parties; or (ii) make the
11 Settling Parties (other than the County) or any other person, parties to, or third party beneficiaries
12 of, any contractual agreement between the County, as airport proprietor of JWA, and the United
13 States of America (or any of its agencies).
14

15
16 **II. BASIS OF AMENDMENTS TO THE TERMS AND CONDITIONS**
17 **OF THE 1985 SETTLEMENT AGREEMENT**

18 7. On December 5, 2000, the Board, by a unanimous vote, directed the County
19 Executive Officer ("CEO") to work with the City to study the potential of extending certain
20 restrictions at JWA beyond December 31, 2005. The Board agendaized this matter on December 5,
21 2000, as a result of a request by the City to review the possibility of amending the 1985 Settlement
22 Agreement to extend beyond 2005, and the desire of the County for amendments to certain terms
23 and conditions of the 1985 Settlement Agreement, that would increase airport capacity and not
24 adversely affect safe airport operations.
25

26 8. On May 22, 2001, the Board approved a Memorandum of Understanding ("MOU")
27 between the County and the City pursuant to which the County would act as lead agency (w the
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1 City designated a responsible agency) in the preparation of an Environmental Impact Report
2 ("EIR") that would support County and City approval of one, or a combination, of the three project
3 case scenarios identified in the EIR regarding amendments to the terms and conditions of the 1985
4 Settlement Agreement concerning restrictions at JWA. This EIR was designated as EIR 582 and
5 was circulated for public review and comment pursuant to, and consistent with, CEQA and CEQA
6 GUIDELINES requirements.
7

8 9. Final EIR 582 was found complete and adequate under CEQA by the Board of
9 Supervisors on February 26, 2002. On June 25, 2002, the Board:

- 10 (a) Certified Final EIR 582 as adequate and complete and as containing all
11 information required by CEQA, the CEQA GUIDELINES, and the County
12 Local CEQA Procedures Manual;
13
14 (b) Adopted the statutorily required Findings, Mitigation Monitoring and
15 Reporting Plan and Statement of Overriding Considerations ("Findings")
16 consistent with CEQA and CEQA GUIDELINES requirements; and
17
18 (c) Authorized execution of an Amended Stipulation after its approval and
19 execution by the City, SPON and AWG.

20 On or about June 25, 2002, the City, SPON and AWG each approved amendments
21 to the Settlement Agreement consistent with Scenario 1.

22 10. The three project case scenarios ("Scenarios") evaluated in EIR 582 proposed
23 modifications to some of the provisions of the 1985 Settlement Agreement, including an increase
24 in permitted operational and facility capacity and an extension of the term of the agreement. In
25 order to permit the Board and the City to determine the final terms of any amendments to the 1985
26 Settlement Agreement, the three Scenarios were each evaluated in the EIR to an equivalent level of
27 detail that would permit the County and the City to adopt amendments to the 1985 Settlement
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1 Agreement consistent with all or a portion of any Scenario. Each of the three Scenarios proposed
2 for the County's and the City's consideration assumed modifications to the terms of the 1985
3 Settlement Agreement prior to December 31, 2005. Each of the three Scenarios contemplated
4 modifications that would increase noise regulated departures and passenger service levels.

5
6 11. Subsequent to June 25, 2002, the airlines serving (or interested in serving) JWA
7 requested certain capacity opportunities beyond those authorized by the Settling Parties on June 25,
8 2002. As a result of those discussions, the Settling Parties approved modifications to the Amended
9 Stipulation ("Modified Amended Stipulation") that were substantially responsive to the airlines'
10 requests.

11 12. On December 10, 2002, the Board:

- 12 (a) Accepted Addendum 582-1 to Final EIR 582 and approved the related
13 amendments to the Findings consistent with this Modified Amended
14 Stipulation as required by CEQA and CEQA GUIDELINES requirements;
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16 (b) Approved modifications to the Amended Stipulation as reflected in the terms
17 and conditions of this Modified Amended Stipulation; and
18
19 (c) Authorized execution of this Modified Amended Stipulation after its
20 approval and execution by the City, SPON and AWG, and subject to the
21 Airport Director receiving a letter from the Federal Aviation Administration
22 ("FAA") which, in the opinion of Counsel, is substantially consistent, and in
23 concurrence, with the Airport Director's letter to the FAA Chief Counsel
24 dated December 3, 2002, stating that the modified Amended Stipulation is
25 consistent with federal law. A copy of the Airport Director's December 3,
26 2002, letter to the FAA is attached to this Stipulation as Exhibit A.

27
28 13. On December 10, 2002, the City accepted Addendum 582-1 to Final EIR 582,

1 adopted amendments to the findings made by the City on June 25, 2002, consistent with the action
2 taken by the County as lead agency, and authorized execution of this Amended Stipulation subject
3 to certain conditions, including receipt of the FAA Chief Counsel opinion letter referenced above.
4 On or about December 10, 2002, SPON and AWG each authorized execution of this Amended
5 Stipulation subject to conditions similar to those specified by the City and the County.
6

7 14. All conditions to the execution of this Amended Stipulation by each of the Settling
8 Parties have been satisfied including the issuance and receipt of the FAA Chief Counsel opinion
9 letter, a copy of which is attached as Exhibit B to this Stipulation.

10 15. The goals and objectives of the County, as the lead agency, the project proponent
11 and the airport proprietor, in preparing EIR 582 and entering into this Amended Stipulation,
12 included:
13

- 14 (a) Recognizing that aviation noise management is crucial to the continued
15 increase in airport capacity;
- 16 (b) Modifying some restrictions on aircraft operations at JWA under the 1985
17 Settlement Agreement in a manner that would provide increased air
18 transportation opportunities to the air traveling public using JWA without
19 any adverse effect on aircraft safety;
- 20 (c) Continuing the County's historical protection of the environmental interests
21 and concerns of persons residing in the vicinity of JWA; and
- 22 (d) Maintaining a reasonable balance between air service and local
23 environmental impacts of that service in a manner that controls and
24 minimizes the County's risk of noise damage claims that otherwise might be
25 made against the County.
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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 opportunities at
3 JWA, while ensuring that airport operations do not unreasonably result in adverse environmental
4 effects on surrounding communities.

5 16. 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 Amended
7 Stipulation contains all of the obligations of the Settling Parties. The County shall have no
8 obligation to the City, SPON or AWG, nor shall there be any restriction on the discretion of the
9 County in its capacity as airport proprietor of JWA, except as that obligation or restriction is
10 expressly stated in this Amended Stipulation.

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

- 14 (a) Defining all regulated passenger flights as Class A flights and eliminating
15 the Class AA Aircraft definition/distinction, effective upon execution of the
16 Modified Final Judgment by the Court. The definition/distinction for Class E
17 Aircraft is preserved unaffected by this Amended Stipulation;
18 (b) Increasing the number of regulated flights allocated to passenger
19 Commercial Carriers at JWA from seventy-three (73) ADDs to eighty-five
20 (85) ADDs, beginning on January 1, 2003, through December 31, 2015;
21 (c) Increasing the MAP level served at the Airport from 8.4 MAP to 10.3 MAP,
22 beginning on January 1, 2003, through December 31, 2010, and increasing
23 the MAP level served at the Airport from 10.3 MAP to 10.8 MAP, beginning
24 on January 1, 2011, through December 31, 2015;

- 1 (d) Continuing to allow the permitted number of operations by "Exempt Aircraft"
2 (i.e., Class E Aircraft) to be unlimited, except that the combined number of
3 passengers served by Commuter Aircraft, Class E Aircraft and Class A
4 Aircraft in regularly scheduled commercial service will not exceed 10.3 MAP,
5 beginning on January 1, 2003, through December 31, 2010, and 10.8 MAP,
6 beginning January 1, 2011, through December 31, 2015;
7
8 (e) Increasing the number of cargo flights from JWA from two (2) Class A
9 ADD cargo flights to a total of four (4) Class A ADD cargo flights, for a
10 total of eighty-nine (89) Class A ADD flights, beginning on January 1, 2003,
11 through December 31, 2015;
12
13 (f) Providing the passenger commercial carriers with the opportunity to use up
14 to two (2) of the Class A ADD cargo flights if there is no demand for these
15 cargo flights by cargo air carriers; and
16
17 (g) Increasing the permitted number of commercial passenger loading bridges at
18 JWA from fourteen (14) loading bridges to twenty (20) loading bridges,
19 through December 31, 2015, and providing up to two (2) hardstand positions
20 for aircraft arriving at the Airport.
21

22 **III. DEFINITIONS**

23 For purposes of this Amended Stipulation and the proposed Modified Final Judgment, the
24 terms below are defined as follows:
25

26 18. "ADD" means "average daily departure," which is computed for purposes of the
27 Plan on an annual basis, from April 1 of each year during which the Plan is in effect, to March 31
28 of the following year. One ADD authorizes any person requiring ADDs for its operations at JWA

1 to operate 365 (or 366 in any "leap year") Authorized Departures during each Plan Year, subject to
2 the definitions, provisions, conditions and limitations of this Amended Stipulation and
3 implementing regulations of the County. "ADD" includes all Class A departures, except
4 emergency or mercy flights, departures resulting from mechanical failures, emergency or weather
5 diversions to JWA necessary to reposition an aircraft into its normal scheduling rotation, the
6 repositioning of aircraft to another airport in connection with a published change in the previous
7 schedule of operations of the airline, test or demonstration flights authorized in advance by the
8 airport director, or charter flights by persons not engaged in regularly scheduled commercial
9 service at JWA.
10

11 19. "Class A Aircraft" means aircraft which: (i) operate at gross takeoff weights at JWA
12 not greater than the Maximum Permitted Gross Takeoff Weight for the individual aircraft main
13 landing gear configuration, as set forth in the text of Section 2.30 of the Phase 2 Access Plan, as
14 amended through July 1, 1999; and which (ii) generate actual energy averaged SENEL levels,
15 averaged during each Noise Compliance Period, as measured at the Departure Monitoring Stations,
16 which are not greater than the values:
17

18 NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
19	
20 NMS1S:	101.8 dB SENEL
21 NMS2S:	101.1 dB SENEL
22 NMS3S:	100.7 dB SENEL
23 NMS4S:	94.1 dB SENEL
24 NMS5S:	94.6 dB SENEL
25 NMS6S:	96.1 dB SENEL
26 NMS7S:	93.0 dB SENEL

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

1 aircraft.

2 20. "Class E Aircraft" means aircraft which: (i) operate at gross takeoff weights at JWA
3 not greater than the Maximum Permitted Gross Takeoff Weight for the individual aircraft main
4 landing gear configuration, as set forth in the text of Section 2.30 of the Phase 2 Access Plan, as
5 amended through July 1, 1999; and which (ii) generate actual energy averaged SENEL levels,
6 averaged during each Noise Compliance Period, as measured at the Departure Monitoring Stations,
7 which are not greater than the values:
8

9	NOISE MONITORING STATION	ENERGY AVERAGED DECIBELS
10	NMS1S:	93.5 dB SENEL
11	NMS2S:	93.0 dB SENEL
12	NMS3S:	89.7 dB SENEL
13	NMS4S:	86.0 dB SENEL
14	NMS5S:	86.6 dB SENEL
15	NMS6S:	86.6 dB SENEL
16	NMS7S:	86.0 dB SENEL

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

21 21. "Commercial Air Carrier" or "Air Carrier" means any person other than a
22 Commuter Air Carrier or Commuter Cargo Carrier who operates Regularly Scheduled Air Service
23 into and out of JWA for the purpose of carrying passengers, freight, cargo, or for any other
24 commercial purpose. For purposes of the Plan, Commercial Air Carrier includes all Commercial
25 Cargo Carriers.

26 22. "Commercial Cargo Carrier" means any person which is an Air Carrier, but which
27 conducts its operations at JWA solely for the purpose of carrying Commercial Cargo with aircraft
28

1 regularly configured with zero (0) passenger seats available to the general public, and which does
2 not offer passenger service to the public in connection with its operations at JWA.

3 23. "Commuter Air Carrier" or "Commuter Carrier" means any person who: (i) operates
4 Regularly Scheduled Air Service into and out of JWA for the purpose of carrying passengers,
5 freight, cargo, or for any other commercial purpose; (ii) with Class E Aircraft regularly configured
6 with not more than seventy (70) passenger seats; and (iii) operating at gross take-off weights of not
7 more than ninety thousand (90,000) pounds. For the purposes of the Plan, Commuter Air Carrier
8 includes all Commuter Cargo Carriers.
9

10 24. "Commuter Cargo Carrier" means any person which is a Commuter Air Carrier, but
11 which conducts its operations at JWA solely for the purpose of carrying Commercial Cargo with
12 aircraft regularly configured with zero (0) passenger seats available to the general public, and
13 which does not offer passenger service to the public in connection with its operations at JWA.
14

15 25. "Departure Monitoring Stations" means JWA noise monitoring stations NMS1S,
16 NMS2S, NMS3S, NMS4S, NMS5S, NMS6S and NMS7S.
17

18 26. "EIR 582 Project" means the flight, passenger and gate increases and the facility
19 improvements authorized by this Amended Stipulation together with the mitigation measures
20 adopted by the Board pursuant to Resolution No. 02-186, as amended by County Resolution No.
21 02-381, adopted on December 10, 2002. The Settling Parties agree that implementation of the EIR
22 582 Project may result in modifications to the Airport that are generally described in Exhibit 2-4 to
23 EIR 582. The Settling Parties also agree that Exhibit 2-4 is only a conceptual plan and that further
24 study by the County will likely require modifications to, or increases in, the areas depicted for
25 commercial or cargo aircraft facilities or operations.

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

1 relevant provisions of the Plan.

2 28. "Noise Compliance Period" means each calendar quarter during the Project Period.

3 29. "Plan" means the Phase 2 Commercial Airline Access Plan and Regulation for John
4 Wayne Airport, Orange County, and any successor regulations or amendments to the Plan.

5 30. "Plan Year" means each period during the Project Period, from April 1 of one year,
6 to March 31 of the following year; except that the County shall have the discretion, beginning
7 January 1, 2003, to redefine "Plan Year" as the calendar year (January 1 to December 31) or other
8 equivalent time period.
9

10 31. "Project Period" means the period from February 26, 1985, to December 31, 2015.

11 Notwithstanding the foregoing, the Settling Parties agree that none of the limits on operations or
12 facilities contained in this Amended Stipulation will expire at the end of the Project Period absent
13 affirmative action by the Board of Supervisors of Orange County, taken in accordance with CEQA
14 and other applicable laws, that is intended to alter the limits.
15

16 32. "Regularly Scheduled Air Service" means all operations conducted by Regularly
17 Scheduled Commercial Users at JWA.
18

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

27 34. "Regulated ADDs" means average daily departures by Class A aircraft operated by
28 Commercial Air Carriers. Supplemental Class A Authorized Departures, as defined in Section 4.0

1 of the Phase 2 Access Plan, are also "Regulated" within the meaning of this section.

2 35. "RON" means any aircraft operated by a Qualified Air Carrier or Qualified
3 Commuter Carrier which "remains overnight" at JWA.
4

5
6 **IV. STIPULATION FOR MODIFICATION OF EXISTING JUDGMENT**

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

10 **A. FLIGHT AND MAP LIMITS**

11 36. Prior to December 31, 2002, there shall be a maximum of seventy-three (73)
12 Commercial Air Carrier Class A and Class AA ADDS and two (2) Commercial Cargo Air Carrier
13 Class A ADDs serving JWA.
14

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

17 38. Prior to December 31, 2002, JWA shall serve no more than 8.4 MAP during
18 any Plan Year.
19

20 39. Beginning January 1, 2003, through December 31, 2015, there shall be a
21 maximum of eighty-five (85) Class A ADDs allocated to Regularly Scheduled Commercial
22 Passenger Carriers.

23 40. In addition to, and beyond the eighty-five (85) Class A ADDs permitted
24 under Paragraph 35 above, beginning on January 1, 2003, through December 31, 2015, there shall
25 be a maximum of four (4) Commercial Cargo Class A ADDs permitted for Commercial Cargo Air
26 Carriers for a combined total maximum of eighty-nine (89) Class A ADDs (commercial and
27 cargo). A maximum of two (2) of the four (4) Commercial Cargo Class A ADDs may be allocated
28

1 by the County to Commercial Passenger Air Carriers for any Plan Year in which the demand for
2 such flights by Commercial Cargo Air Carriers is less than four (4) ADDs.

3 41. Beginning on January 1, 2003, through December 31, 2010, JWA shall serve
4 no more than 10.3 MAP during any Plan Year. Beginning on January 1, 2011, through December
5 31, 2015, JWA shall serve no more than 10.8 MAP during any Plan Year.

6
7 **B. FACILITY CONSTRAINTS**

8 42. Prior to December 31, 2002, there shall be a maximum of fourteen (14)
9 loading bridges in use at JWA. Each loading bridge may serve no more than one (1) flight at a
10 time.

11 43. Beginning January 1, 2003, through December 31, 2015, there may be a
12 maximum of twenty (20) loading bridges in use at JWA. Each loading bridge may serve no more
13 than one (1) flight at a time.

14 44. During the term of this Amended Stipulation (through December 31, 2015),
15 all air carrier aircraft regularly configured with ninety (90) or more passenger seats shall load and
16 unload passengers only through the loading bridges in use at JWA, except that:

17 (a) Prior to January 1, 2006, air carrier aircraft regularly configured with
18 ninety (90) or more passenger seats may load and unload passengers
19 by stairway or other means not involving the use of loading bridges
20 (hardstands) as (i) the Airport Director reasonably deems necessary
21 to accommodate commercial aircraft operations authorized by this
22 Amended Stipulation, and (ii) only to the extent that the total of the
23 loading bridges and the number of "hardstands" does not exceed
24 twenty (20);

25 (b) Through December 31, 2015, arriving air carrier aircraft regularly
26 configured with ninety (90) or more passenger seats may unload
27 passengers by stairway or other means not involving the use of
28

loading bridges (hardstands) as (i) the Airport Director or designee reasonably deems necessary to accommodate arriving commercial aircraft operations, and (ii) only to the extent that the total of the number of "arriving" "hardstand" positions does not exceed two (2) positions;

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

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

(e) Air Carrier aircraft regularly configured with ninety (90) or more passenger seats may load and unload passengers by stairway or other means not involving the use of loading bridges as the Airport Director reasonably deems necessary to accommodate commercial aircraft operations authorized by this Amended Stipulation during any period where compliance with safety or security directives of any federal agency with lawful jurisdiction over airport operations or

activities [including, but not necessarily limited to, the Federal Aviation Administration ("FAA") and the Transportation Security Agency ("TSA")], imposes or adopts any safety or security directive or requirement affecting the airport which impairs the full and effective utilization of the loading bridges at the airport.

C. OTHER STIPULATED PROVISIONS

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

46. In mitigation of the EIR 508/EIS Project, and for other reasons, the County has adopted a "General Aviation Noise Ordinance" ("GANO") (County Ordinance 3505). One principal policy objective of the GANO is to exclude from operations at JWA general aviation aircraft that generate noise levels greater than the noise levels permitted for aircraft used by Commercial Air Carriers. During the Project Period, the County shall maintain in effect an ordinance that meets this basic policy objective. Nothing in this Amended Stipulation precludes

1 the County from amending the GANO to enhance or facilitate its reasonable achievement of its
2 principal purpose, or the effective enforcement of its provisions.

3 47. During the Project Period, the City, SPON, AWG, their agents, attorneys,
4 officers, elected officials and employees agree that they will not challenge, impede or contest, by or
5 in connection with litigation, or any adjudicatory administrative proceedings, or other action, the
6 funding, implementation or operation of the EIR 582 Project, or any facilities that are reasonably
7 related to implementation of the EIR 582 Project at JWA, by the County and the United States; nor
8 will they urge other persons to do so, or cooperate in any such efforts by other parties except as
9 may be expressly required by law. Nothing in this paragraph prohibits the Settling Parties from
10 submitting comments or presenting testimony regarding any future environmental documentation
11 prepared by the County with respect to implementation of the EIR 582 Project.
12

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

22 49. Upon execution of this Amended Stipulation, the Settling Parties, their
23 agents, officers, directors, elected officials and employees each agree to release, acquit and forever
24 discharge each other, their heirs, employees, officials, directors, supervisors, consultants and
25 successors-in-interest from any and all claims, actions, lawsuits, causes of action, liabilities,
26 demands, damages, costs, attorneys' fees and expenses which may arise from or concern the
27
28

1 subject matter of this Amended Stipulation, including, but not limited to, the legal adequacy of EIR
2 582, the legal adequacy of the terms and conditions for the modification of the 1985 Settlement
3 Agreement and confirming judgment, and/or the legal adequacy of any of the amendments to the
4 Plan through the Project Period. Nothing in this release shall limit in any way the ability of any
5 Settling Party to enforce the terms, conditions and provisions of this Amended Stipulation and the
6 Modified Final Judgment.
7

8 50. All Settling Parties to this Amended Stipulation specifically acknowledge
9 that they have been informed by their legal counsel of the provisions of section 1542 of the
10 CALIFORNIA CIVIL CODE, and they expressly waive and relinquish any rights or benefits available
11 to them under this statute, except as provided in this Amended Stipulation. CALIFORNIA CIVIL
12 CODE §1542 provides:
13

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

17 Notwithstanding section 1542 of the CALIFORNIA CIVIL CODE, or any other
18 statute or rule of law of similar effect, this Amended Stipulation shall be given its full force and
19 effect according to each and all of its express terms and provisions, including those related to any
20 unknown or unsuspected claims, liabilities, demands or causes of action. All parties to this
21 Amended Stipulation have been advised specifically by their legal counsel of the effect of this
22 waiver, and they expressly acknowledge that they understand the significance and consequence of
23 this express waiver of CALIFORNIA CIVIL CODE §1542. This waiver is not a mere recital, but rather
24 forms a material part of the consideration for this Amended Stipulation.
25

26 51. During the Project Period, the Settling Parties agree that they will jointly
27 defend, using their best efforts, any pending or future litigation, administrative investigation,
28

1 administrative adjudication, or any similar or related enforcement action or claim against the
2 County related to, or arising from, this Amended Stipulation, or the agreement(s) embodied in this
3 Amended Stipulation, the EIR 582 Project at JWA, or the County's regulations or actions in
4 implementation of, or enforcing limitations upon, the Project. If SPON does not have adequate
5 funds to retain legal counsel, SPON shall be deemed to satisfy the requirements of this paragraph if
6 SPON cooperates with the other Settling Parties in the litigation or administrative proceeding if,
7 and to the extent, requested by the other Settling Parties.
8

9 52. During the Project Period, the City (but not SPON or AWG) agrees that it
10 will, at its own expense, reimburse the County for all reasonable attorneys' fees and costs incurred
11 by the County in defending any pending or future litigation, administrative investigation,
12 administrative adjudication, or any similar or related enforcement action or claim against the
13 County challenging: the legality of this Amended Stipulation or the agreement embodied in this
14 Amended Stipulation, the EIR 582 Project (including any Addendum to EIR 582), the authority of
15 the County to approve or use any facilities generally consistent with, and reasonably related to,
16 implementation of the EIR 582 Project at JWA, or the County's regulations in implementation of,
17 or enforcing limitations upon, the Project. The City's obligations pursuant to this paragraph do not
18 extend to any litigation or enforcement action initiated against the County by any other Settling
19 Party alleging a breach by the County of this Amended Stipulation. Reasonable costs include, but
20 are not limited to, the costs of retaining experts or consultants to provide legal counsel, the costs of
21 preparing documents for introduction in any litigation, administrative investigation, administrative
22 adjudication, or any similar or related enforcement action or claim, or to assist legal counsel, the
23 costs of reproducing any document, and reasonable expenses such as transportation, meals, lodging
24 and communication incurred in attending meetings or proceedings related to litigation or
25 administrative proceedings. The County shall be obligated to defend, using its best efforts, any
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27
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1 litigation, administrative challenge or enforcement proceeding related to this Amended Stipulation.
2 In recognition of the County's obligation to defend using its best efforts, the County shall have full
3 discretion to select counsel, experts or other professionals to represent or advise it in respect of any
4 such matters. The City shall reimburse the County for all reasonable litigation or administrative
5 attorneys' fees or costs within thirty (30) days after an invoice is submitted to the City for
6 reimbursement. The rights and obligations set forth in this paragraph shall survive the termination
7 or expiration of this Amended Stipulation.
8

9 53. The Settling Parties acknowledge that the County intends, in the near future,
10 to develop amendments to the current Plan and/or other airport regulations relative, among other
11 issues, to the manner in which the County allocates Class A ADDs and exempt aircraft operating
12 opportunities within the MAP level agreed to in this Amended Stipulation. The development and
13 implementation of amendments to the Plan was contemplated by, and is considered an element of,
14 all of the Scenarios evaluated in EIR 582, and the parties agree that no additional or further
15 environmental documentation is required under CEQA or NEPA to allow the County to develop or
16 implement the amendments.
17

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

21 FOR THE COUNTY:

Richard Oviedo
Deputy County Counsel
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

22
23
24 with a copy to:

Michael Scott Gatzke
Lori D. Ballance
Gatzke Dillon & Ballance LLP
1921 Palomar Oaks Way, Suite 200
Carlsbad, CA 92008

1 FOR THE CITY:

City of Newport Beach
P.O. Box 1768
Newport Beach, CA 92658-8915

3 FOR SPON:

Roy B. Woolsey
113 Via Venezia
Newport Beach, CA 92663-5516

5 FOR AWG:

Barbara E. Lichman
Chevalier, Allen & Lichman
2603 Main Street, Suite 1000
Irvine, CA 92714

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

11
12 **V. ENFORCEMENT OF THE JUDGMENT**

13 55. If a dispute arises concerning the interpretation of, or a Settling Party's compliance
14 with, the Modified Final Judgment, and if no exigent circumstances require immediate
15 proceedings, any Settling Party interested in the interpretation or compliance shall provide written
16 notice of the dispute to the other Settling Parties. Within twenty-one (21) days of the sending of
17 such notice, the parties shall meet in person (or by their authorized representatives) and attempt in
18 good faith to resolve the dispute.

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

27 57. If the Court determines that a Settling Party is not complying with the Modified
28

1 Final Judgment, the Court shall issue an order, in the nature of specific performance of the
2 Modified Final Judgment, requiring the defaulting party to comply with the Modified Final
3 Judgment within a reasonable period of time. If the defaulting party fails to comply with the order,
4 any other Settling Party may then seek enforcement under any authorized processes of the Court.

5
6 **VI. TERM OF AGREEMENT**

7 58. This Amended Stipulation is contingent upon the Court's entry of the Modified
8 Final Judgment such that the obligations, duties and rights of the parties are only those that are
9 contained within this Amended Stipulation amending the terms and conditions of the 1985
10 Settlement Agreement. If the Modified Final Judgment is not entered, this Amended Stipulation
11 shall be null and void, and shall not be admissible for any purpose. Unless the Modified Final
12 Judgment is vacated at an earlier date in the manner described in paragraphs 59 through 63, this
13 Amended Stipulation and Modified Final Judgment shall remain in full force and effect during the
14 Project Period.
15

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

18 (a) Any trial court enters a final judgment that determines that the limits on the
19 number of: (i) Regulated Class A ADDs; (ii) MAP levels; or (iii) facilities
20 improvements contained in this Amended Stipulation or the curfew
21 provisions of paragraphs 45 and 46 of this Amended Stipulation are
22 unenforceable for any reason, and any of these stipulated limitations are
23 exceeded;
24

25 (b) Any trial court issues a preliminary injunction that has the effect of
26 precluding implementation or enforcement of the limits on the number of
27 Regulated Class A ADDs, MAP levels or facilities improvements
28

1 contained in this Amended Stipulation or the curfew provisions of
2 paragraphs 45 and 46 of this Amended Stipulation based upon a finding of a
3 probability of making at trial any of the determinations described in
4 subparagraph (a) above, and such preliminary injunction remains in effect
5 for a period of one (1) year or more, and any of these stipulated limitations
6 are exceeded; or
7

- 8 (c) Any appellate court issues a decision or order that makes any of the
9 determinations described in subparagraphs (a) or (b) above, or affirms a trial
10 court ruling based upon such a determination, and any of these stipulated
11 limitations are exceeded.
12

13 60. The County may file a Motion to Vacate Judgment if:

- 14 (a) The City, SPON or AWG fail to comply with the provisions of paragraph 47
15 of this Amended Stipulation;
16
17 (b) A trial or appellate court issues an order that has the effect of prohibiting the
18 County from implementing or enforcing any of the operational restrictions or
19 facilities limitations required by this Amended Stipulation; or
20
21 (c) The FAA, or any successor agency, withholds federal grant funds from the
22 County, or declines to permit the County to impose or use passenger facility
23 charges at JWA based on a determination by the FAA that the adoption or
24 implementation of all or a portion of this Amended Stipulation is illegal or
25 unconstitutional as a matter of federal law, and (i) the FAA has issued an
26 order or other determination to that effect which is subject to judicial
27 review; and (ii) the County has, using reasonable efforts, been unable to
28 secure a judicial order overruling or vacating the FAA order or other

determination.

This provision shall not apply to activities expressly permitted by paragraph 47 of this Amended Stipulation.

61. Pursuant to Rule 60(b) of the FEDERAL RULES OF CIVIL PROCEDURE, the Court shall, after consideration of a motion to vacate judgment, enter an order vacating the Modified Final Judgment if the Court determines that any of the conditions described in paragraphs 59 or 60 have occurred. Once vacated, the Modified Final Judgment and this Amended Stipulation shall be null and void, unenforceable and inadmissible for any purpose, and the Settling Parties will, pursuant to paragraph 62, be deemed to be in the same position that they occupied before the Modified Final Judgment and this Amended Stipulation were executed and approved, and the Settling Parties shall have the full scope of their legislative and administrative prerogatives.

62. If the Modified Final Judgment is vacated before December 31, 2005, the Settling Parties agree that the original 1985 Settlement Agreement, the original Confirming Judgment and the seven (7) subsequent amendments to the 1985 Settlement Agreement shall remain in full force and effect through December 31, 2005, if, for any reason, all or a portion of this Amended Stipulation is determined to be invalid and the Modified Final Judgment is vacated.

63. For the period after December 31, 2005, if any of the events described in paragraphs 59 or 60 occur during the Project Period, this Amended Stipulation and the Modified Final Judgment shall remain in full force and effect with respect to those terms and conditions or portions thereof that are not affected by the event(s) unless the court has granted a motion to vacate judgment pursuant to paragraphs 59 and 60.

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1 **VII. MODIFICATION**

2 64. The limitations on Regulated Class A ADDs, MAP levels and facilities provided for
3 in this Amended Stipulation, the provisions of paragraphs 45 and 46 of this Amended Stipulation,
4 and the agreements of the City, SPON and AWG not to contest or impede implementation of the
5 EIR 582 Project (paragraph 47 of this Amended Stipulation), are fundamental and essential aspects
6 of this Amended Stipulation, and were agreed upon with full recognition of the possibility that
7 economic, demographic, technological, operational or legal changes not currently contemplated
8 could occur during the Project Period. It was in recognition of these essential aspects of this
9 Amended Stipulation, and the inability to accurately predict certain future conditions that the
10 Settling Parties have agreed to the specific and express provisions of paragraph 59 of this Amended
11 Stipulation. The Settling Parties further acknowledge that this Amended Stipulation provides for
12 the Settling Parties to perform undertakings at different times, and that the performance of certain
13 of the undertakings, once accomplished, could not be undone. Accordingly, except as provided
14 herein, the Settling Parties expressly waive any potential right to seek to modify or vacate the
15 terms of this Amended Stipulation or the Modified Final Judgment, except by written mutual
16 agreement.
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18
19

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

23 Michael Scott Gatzke
24 Lori D. Ballance
25 Gatzke Dillon & Ballance LLP

26 Dated: June 9, 2003

27 By: 
28 Michael Scott Gatzke

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County Counsel, County of Orange

Date: 1/9/03

By: Richard P. Oviedo
Richard Oviedo
Deputy County Counsel

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

Robert H. Burnham
City Attorney of Newport Beach

Dated: 1/9/03

By: Robert H. Burnham
Robert H. Burnham

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

Roy B. Woolsey

Dated: 1/9/03

By: Roy B. Woolsey
Roy B. Woolsey

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

Barbara E. Lichman
Chevalier, Allen & Lichman

Dated: 1/9/03

By: Barbara E. Lichman
Barbara E. Lichman

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MODIFIED FINAL JUDGMENT

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

1 B. The provisions of paragraphs 17 through 46 and 55 through 63 of the Amended
2 Stipulation are hereby incorporated as part of this Modified Final Judgment.

3 C. The Settling Parties shall each bear their own costs and attorneys' fees in connection
4 with the entry of this Modified Final Judgment.
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7 **IT IS SO ORDERED.**
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10 Dated: _____, 200_

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

Exhibit B



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.

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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 ("AALA") 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.

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- 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'"

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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

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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.

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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

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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 AIA 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

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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