Settlement Agreement

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COUNTY OF ORANGE, Plaintiff, v. AIR CALIFORNIA, *et al.*, Defendants.	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
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.	

I. BASIS FOR THE "1985 SETTLEMENT AGREEMENT"

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

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

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

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

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

5. Regularly scheduled commercial service was first initiated at JWA in 1967, and since the late 1960s, the County has regulated the use and operation of JWA by a variety of means in an effort to control and reduce any adverse environmental impacts caused by aircraft operations to and from JWA. These regulations have included such restrictions as: (i) strict noise-based limitations on the type of aircraft which are permitted to use JWA, including both commercial and

general aviation aircraft; (ii) a nighttime "curfew" on aircraft operations exceeding certain specified noise levels; and (iii) limitations on the number of average daily commercial departures which can occur at the facility, either directly or through a limit on the permitted number of annual commercial passengers. Even prior to 1985, the controlled nature of the airport's operation, arising from a wide range of political, environmental, social and economic considerations, had become institutionalized to the extent that the regulated nature of the airport was a definitional component of its character as an air transportation facility.

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

II. BASIS OF AMENDMENTS TO THE TERMS AND CONDITIONS OF THE 1985 SETTLEMENT AGREEMENT

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

8. On May 22, 2001, the Board approved a Memorandum of Understanding ("MOU") between the County and the City pursuant to which the County would act as lead agency (with the

City designated a responsible agency) in the preparation of an Environmental Impact Report ("EIR") that would support County and City approval of one, or a combination, of the three project case scenarios identified in the EIR regarding amendments to the terms and conditions of the 1985 Settlement Agreement concerning restrictions at JWA. This EIR was designated as EIR 582 and was circulated for public review and comment pursuant to, and consistent with, CEQA and CEQA GUIDELINES requirements.

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

(a) Certified Final EIR 582 as adequate and complete and as containing all information required by CEQA, the CEQA GUIDELINES, and the County Local CEQA Procedures Manual;

(b) Adopted the statutorily required Findings, Mitigation Monitoring and Reporting Plan and Statement of Overriding Considerations ("Findings") consistent with CEQA and CEQA GUIDELINES requirements; and

(c) Authorized execution of an Amended Stipulation after its approval and execution by the City, SPON and AWG.

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

10. The three project case scenarios ("Scenarios") evaluated in EIR 582 proposed modifications to some of the provisions of the 1985 Settlement Agreement, including an increase in permitted operational and facility capacity and an extension of the term of the agreement. In order to permit the Board and the City to determine the final terms of any amendments to the 1985 Settlement Agreement, the three Scenarios were each evaluated in the EIR to an equivalent level of detail that would permit the County and the City to adopt amendments to the 1985 Settlement

Agreement consistent with all or a portion of any Scenario. Each of the three Scenarios proposed for the County's and the City's consideration assumed modifications to the terms of the 1985 Settlement Agreement prior to December 31, 2005. Each of the three Scenarios contemplated modifications that would increase noise regulated departures and passenger service levels.

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

12. On December 10, 2002, the Board:

(a) Accepted Addendum 582-1 to Final EIR 582 and approved the related amendments to the Findings consistent with this Modified Amended Stipulation as required by CEQA and CEQA GUIDELINES requirements;

(b) Approved modifications to the Amended Stipulation as reflected in the terms and conditions of this Modified Amended Stipulation; and

(c) Authorized execution of this Modified Amended Stipulation *after its* approval and execution by the City, SPON and AWG, and subject to the Airport Director receiving a letter from the Federal Aviation Administration ("FAA") which, in the opinion of Counsel, is substantially consistent, and in concurrence, with the Airport Director's letter to the FAA Chief Counsel dated December 3, 2002, stating that the modified Amended Stipulation is consistent with federal law. A copy of the Airport Director's December 3, 2002, letter to the FAA is attached to this Stipulation as Exhibit A.

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

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

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

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

(a) Recognizing that aviation noise management is crucial to the continued increase in airport capacity;

(b) Modifying some restrictions on aircraft operations at JWA under the 1985 Settlement Agreement in a manner that would provide increased air transportation opportunities to the air traveling public using JWA without any adverse effect on aircraft safety;

(c) Continuing the County's historical protection of the environmental interests and concerns of persons residing in the vicinity of JWA; and

(d) Maintaining a reasonable balance between air service and local environmental impacts of that service in a manner that controls and minimizes the County's risk of noise damage claims that otherwise might be made against the County.

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

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

17. This Amended Stipulation continues 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:

(a) Defining all regulated passenger flights as Class A flights and eliminating the Class AA Aircraft definition/distinction, effective upon execution of the Modified Final Judgment by the Court. The definition/distinction for Class E Aircraft is preserved unaffected by this Amended Stipulation;

(b) Increasing the number of regulated flights allocated to passenger Commercial Carriers at JWA from seventy-three (73) ADDs to eighty-five (85) ADDs, beginning on January 1, 2003, through December 31, 2015;

(c) Increasing the MAP level served at the Airport from 8.4 MAP to 10.3 MAP, beginning on January 1, 2003, through December 31, 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;

(d) Continuing to allow the permitted number of operations by "Exempt Aircraft" (*i.e.*, 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;

(e) Increasing the number of cargo flights from JWA from two (2) Class A ADD cargo flights to a total of four (4) Class A ADD cargo flights, for a total of eighty-nine (89) Class A ADD flights, beginning on January 1, 2003, through December 31, 2015;

(f) Providing the passenger commercial carriers with the opportunity to use up to two (2) of the Class A ADD cargo flights if there is no demand for these cargo flights by cargo air carriers; and

(g) Increasing the permitted number of commercial passenger loading bridges at JWA from fourteen (14) loading bridges to twenty (20) loading bridges, through December 31, 2015, and providing up to two (2) hardstand positions for aircraft arriving at the Airport.

III. DEFINITIONS

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

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

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

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

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

In determining whether an aircraft is a Class A aircraft, its noise performance at the 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.

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

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

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

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

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

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

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

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

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

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

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

relevant provisions of the Plan.

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

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

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

31. "Project Period" means the period from February 26, 1985, to December 31, 2015. Notwithstanding the foregoing, the Settling Parties agree that none of the limits on operations or facilities contained in this Amended Stipulation will expire at the end of the Project Period absent affirmative action by the Board of Supervisors of Orange County, taken in accordance with CEQA and other applicable laws, that is intended to alter the limits.

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

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

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

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

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

IV. STIPULATION FOR MODIFICATION OF EXISTING JUDGMENT

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

A. FLIGHT AND MAP LIMITS

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

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

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

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

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

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

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

B. FACILITY CONSTRAINTS

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

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

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

(a) Prior to January 1, 2006, 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 (hardstands) as (i) the Airport Director reasonably deems necessary to accommodate commercial aircraft operations authorized by this Amended Stipulation, and (ii) only to the extent that the total of the loading bridges and the number of "hardstands" does not exceed twenty (20);

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

loading bridges (hardstands) as (i) the Airport Director or his 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

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

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

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

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

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

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

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

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

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

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

52. During the Project Period, the City (but not SPON or AWG) agrees that it will, at its own expense, reimburse the County for all reasonable attorneys' fees and costs incurred by the County in defending any pending or future litigation, administrative investigation, administrative adjudication, or any similar or related enforcement action or claim against the County challenging: the legality of this Amended Stipulation or the agreement embodied in this Amended Stipulation, the EIR 582 Project (including any Addendum to EIR 582), the authority of the County to approve or use any facilities generally consistent with, and reasonably related to, implementation of the EIR 582 Project at JWA, or the County's regulations in implementation of, or enforcing limitations upon, the Project. The City's obligations pursuant to this paragraph do not extend to any litigation or enforcement action initiated against the County by any other Settling Party alleging a breach by the County of this Amended Stipulation. Reasonable costs include, but are not limited to, the costs of retaining experts or consultants to provide legal counsel, the costs of preparing documents for introduction in any litigation, administrative investigation, administrative adjudication, or any similar or related enforcement action or claim, or to assist legal counsel, the costs of reproducing any document, and reasonable expenses such as transportation, meals, lodging and communication incurred in attending meetings or proceedings related to litigation or administrative proceedings. The County shall be obligated to defend, using its best efforts, any

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

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

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

FOR THE COUNTY:

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

with a copy to:

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

FOR THE CITY:	City of Newport Beach P.O. Box 1768 Newport Beach, CA 92658-8915
FOR SPON:	Roy B. Woolsey 113 Via Venezia Newport Beach, CA 92663-5516
FOR AWG:	Barbara E. Lichman Chevalier, Allen & Lichman 2603 Main Street, Suite 1000 Irvine, CA 92714

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

V. ENFORCEMENT OF THE JUDGMENT

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

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

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

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

VI. TERM OF AGREEMENT

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

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

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

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

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

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

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

(a) The City, SPON or AWG fail to comply with the provisions of paragraph 47 of this Amended Stipulation;

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

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

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

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

Michael Scott Gatzke
Lori D. Ballance
Gatzke Dillon & Ballance LLP

Dated: 2/13/03

By: _____
Michael Scott Gatzke

County Counsel, County of Orange

Date: 2/13/03

By: _____
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: 2/12/03

By: _____
Robert H. Burnham

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

Roy B. Woolsey

Dated: 2/14/03

By: _____
Roy B. Woolsey

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

Barbara E. Lichman
Chevalier, Allen & Lichman

Dated: 2/12/03

By: _____
Barbara E. Lichman

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.

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

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

IT IS SO ORDERED.

TERRY J. HATTER, JR.

Dated: 2-4-05, 2003

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

EXHIBIT A

JHN WAYNE
AIRPORT
inge County, California

an L. Murphy
:port Director

December 3, 2002

David G. Leitch
Chief Counsel
Federal Aviation Administration
AGC 200
800 Independence Avenue, SW
Washington, D.C. 20591

Re: *John Wayne Airport: County of Orange Request for Legal Opinion Regarding Amendments to a 1985 "Settlement Agreement" Relating to Aircraft Operations at SNA*

Dear Mr. Leitch :

The County of Orange, California ("County") is the owner and operator of John Wayne Airport, Orange County (SNA) ("JWA" or "the airport"). The County intends to implement certain modifications to a pre-existing "settlement agreement" which was originally entered into in 1985and included various noise based restrictions and regulations on aircraft operations at JWA. On June 25, 2002, the parties to that agreement took action agreeing to settlement agreement modifications that authorized increases in operational capacity at JWA beginning in 2003 (the "settlement amendment"). The settlement amendment also permits important capacity increases and airport facilities improvements which would allow and support additional operational opportunities to the airlines, permitting them to provide additional and enhanced service to the air traveling public. The amendment would have no effect on airport or aircraft safety. Further, in recent discussions between the County and airlines serving (or interested in serving) JWA, the airlines have requested certain capacity opportunities beyond those authorized by the parties on June 25, 2002. As a result, the settling parties are currently scheduled to consider approving next Tuesday, December 10, 2002, modifications to the settlement amendment which would be substantially responsive to those requests, subject to our receipt of the opinion from FAA requested by this letter.

The 1985 settlement agreement was embodied in a federal court stipulation for judgment, and the amendments to the settlement agreement would be similarly reflected in a filed stipulation that, with the consent of the federal court, would modify the original 1985 judgment permitting the additional operational capacity and improvements contemplated by the settlement amendment. We have enclosed with this letter a draft of the amended stipulation which reflects not only the amendments authorized by the actions of the parties on June 25, 2002, but which also reflects the additional capacity requested by the airlines, which the parties are prepared to authorize once we have received the requested concurring opinion from FAA.

160 Airway Avenue
osta Mesa, CA
2626-4608
49.252.5171
49.252.5178 fax
ww.ocair.com

REQUESTED OPINION

In order to obtain the consent of the other settling parties to the proposed modifications to the settlement amendment, the County requests an opinion of the Chief Counsel of FAA concurring in the following points:

1. Within the meaning of, and for all purposes related to Section 9304 of ANCA, the Aviation Noise and Capacity Act of 1990 (49 U.S.C. § 47524) and Section 161.3(a) of the Federal Aviation Regulations (14 C.F.R. § 161.3(a)), the 1985 Settlement Agreement is an airport regulation that contains airport noise and access restrictions (such as the provisions related to limits on noise-regulated departures, passenger service levels and nighttime operations) in effect as of October 1, 1990. In other words, the airport noise and access restrictions contained in the 1985 Settlement Agreement are permissible pursuant to the provisions of ANCA and Part 161.

2. Within the meaning of, and for all purposes related to Section 9304(a)(2)(C)(iii) of ANCA (49 U.S.C. § 47524(d)(3)) and Section 161.7(b)(3) of the Federal Aviation Regulations (14 C.F.R. § 161.7(b)(3)), the 1985 Settlement Agreement is an "intergovernmental agreement including airport noise or access restrictions" (such as the provisions related to limits on noise-regulated departures, passenger service levels and nighttime operations) that was "in effect on November 5, 1990." In other words, the airport noise and access restrictions contained in the 1985 Settlement Agreement are permissible pursuant to the provisions of ANCA and FAR Part 161 relating to intergovernmental agreements.

3. Pursuant to Section 9304(a)(2)(C)(iv) of ANCA (49 U.S.C. § 47524(d)(4)) and Sections 161.3(b) and 161.7(b)(4) of the Federal Aviation Regulations (14 C.F.R. §§ 161.3(b) and 161.7(b)(4)), "a subsequent amendment of 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" is permitted by ANCA and Part 161. The seven prior amendments of the 1985 JWA Settlement Agreement and the modified Amended Settlement Agreement, including the provisions related to limits on noise-regulated departures, passenger service levels and nighttime operations, are each subsequent amendments that are permitted pursuant to the sections quoted above because they do not, in comparison to the analogous provisions of the 1985 JWA Settlement Agreement, reduce or limit aircraft operations or affect aircraft safety.

4. A subsequent amendment of 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 can be approved and implemented by the County pursuant to Section 105(b)(1) of the Airline Deregulation Act of 1978 (49 U.S.C. § 41713(b)(3)) in

accordance with its powers and rights as proprietor of JWA. The modified Amended Settlement Agreement is such a subsequent amendment.

5. Implementation of the provisions of the modified Amended Settlement Agreement:

   (a) Is not inconsistent with any of the County's "sponsor assurances" or other covenants or obligations under any airport grant agreement entered into by the County and FAA pursuant to any Federal law or regulation;

   (b) Will not adversely affect any application for Federal grant funds submitted in the future by the County for eligible projects at JWA; and

   (c) Will not adversely affect any application submitted in the future by the County to impose or use passenger facility charges with respect to eligible projects at JWA.

6. The modified Amended Settlement Agreement is consistent with and does not violate any provision of existing federal law for which FAA has statutory or delegated enforcement or implementation responsibilities.

We are aware of the substantial and important national issues that FAA is addressing on a continuing basis. We are also aware that our request that we receive your response, if at all possible, by December 10, 2002, in order to allow the County and the other parties to take their scheduled action to approve the settlement amendment modifications proposed by the airlines is extraordinary.

SETTLEMENT AGREEMENT AMENDMENTS

Settlement Agreement Amendments

On June 25, 2002, the parties to the 1985 Settlement Agreement (the County, the City of Newport Beach ["City"], Stop Polluting Our Newport ["SPON"] and the Airport Working Group of Orange County, Inc. ["AWG"]) approved amendments to the agreement. Those amendments *did not impose any restrictions on airport use at JWA beyond those in effect under the 1985 Settlement Agreement.* However, the amendments *did* provide important access and capacity enhancements which will allow JWA to serve substantially more passengers and air cargo than permitted under the 1985 Settlement Agreement. In general terms, some of the more significant amendments include: (a) authorizing, as early as January 1, 2003, increases in the permitted level of noise regulated commercial air carrier departures (from 73 ADD to 89 ADD – inclusive

of 4 all-cargo ADD)[1] ; (b) effective January 1, 2003, authorizing increases in the permitted passenger service level from 8.4 million annual passengers ("MAP") to 9.8 MAP; and (c) authorizing immediate construction to increase the number of permitted passenger loading bridges from 14 to 18 bridges. The amendments also extend the term of the settlement stipulation between the parties to December 31, 2015.

The Amendments were the outgrowth of an extensive public information program designed, in part, to obtain widespread community support for increases in flights, passengers and loading bridges in consideration of an extension of the term of the Settlement Agreement. Approval of the Amendments, including the capacity enhancements, was supported by every city impacted by operations at JWA and every "pro-airport" and "anti-airport" city that was actively involved in the El Toro reuse planning. The Orange County Congressional delegation and Orange County representatives in the State Legislature are unanimous in their support for the Amendments.

Air Carrier Requested Modifications to the Settlement Amendment

In August 2002, the County solicited input from airport users and the public on a wide range of issues relating to allocation of the new capacity authorized by the settlement amendment and related modifications to the *Phase 2 Access Plan*, by which the County has regulated capacity allocations and use since 1985. Written comments were submitted by all ten (10) incumbent air carriers and two (2) potential new entrant airlines in September 2002. The County also offered to meet with individual airlines, any airline trade organization, and the JWA Airport Airline Affairs Committee ("AAAC") representing airlines serving JWA, at their convenience to discuss any issues of significance to them. A number of such meetings have occurred, including a continuing series of meetings with the AAAC.

The County has held a number of helpful meetings with FAA staff during 2002 in order to advise the agency of the status of the County's process, and to discuss with them potential issues of importance to the agency. At the request of FAA staff, we provided the agency with extensive

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[1] In this respect, the City, AWG and SPON agreed to an important capacity enhancement which significantly improves the flexibility of the air carriers in using their noise regulated operating capacity at JWA. As part of the 1985 Master Plan project (approved by the Board of Supervisors on February 26, 1985) and as subsequently agreed to in the 1985 settlement agreement, the 73 regulated ADDs were divided into two classes: "Class A ADDs" and "Class AA ADDs"). These "classes" were differentiated and defined based upon aircraft noise levels. The permitted Class A single event noise levels are higher than the Class AA permitted noise levels. All other factors remaining equal, this means that the Class A flight can operate with a greater passenger load to more distant markets. Of the 73 regulated ADDs permitted under the current settlement agreement, a maximum of 39 may be allocated as Class A ADDs, and 34 must be allocated as Class AA ADDs. In the settlement amendment, the parties have eliminated the Class AA distinction, and all of the regulated ADDs permitted under the amendment are defined as Class A ADDs.

historical information regarding the unique history of JWA noise regulations and the settlement amendment process. We remain willing to provide any other information you may find helpful to your consideration of this request. Finally, we have periodically met with and briefed the members of the Orange County delegation and other members of Congress regarding the status of the settlement amendment process.

The AAAC has requested modifications to the settlement amendments to increase passenger service levels and permitted loading bridges beyond those originally agreed to by the parties on June 25, 2002. These include increasing the number of gates from eighteen (18) to twenty (20), increasing flexibility in using stair loading when necessary and some flexibility in passenger carrier use of authorized cargo ADDs when there is not full demand for the cargo ADDs from all-cargo carriers, and an increase in authorized passengers from 9.8 to 10.8 MAP. The City, AWG and SPON are each willing to agree to, and expeditiously proceed to implement, these modifications and the capacity enhancing provisions of the amendments on or before January 1, 2003, provided the County receives FAA's written concurrence on the questions presented in this letter so that they can have the comfort of knowing that they will be able to receive the benefit of their "bargain" without FAA opposition or legal challenge. The County both understands and supports this request.[2]

Additional Discussion

The County and the other settling parties, of course, believe that the 1985 Settlement Agreement clearly qualifies under the "general grandfathering" provisions of ANCA, as well as the "intergovernmental agreement" statutory exception of 49 U.S.C.A. §47524(d)(4). Even prior to the 1985 agreement, and concurrent with the initiation of commercial operations at JWA, the County has regulated maximum permitted noise and flight levels in an attempt to balance the needs of the Orange County community for reasonable air service opportunities with the legitimate environmental interests of communities located in the immediate vicinity of JWA. In fact, the regulated nature of airport operations has been a defining characteristic of the facility since the 1960's. The history and circumstances at JWA are, we believe, truly unique. We are aware of only two other airports which have adopted "slot" restrictions similar to the County's ADD limitations: South Lake Tahoe Airport and Long Beach Municipal Airport. Both operate under special ANCA statutory exceptions. Since adoption of the limitations at South Lake Tahoe Airport, due principally to lack of sufficient demand, commercial service has been

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[2] In addition to our desire to receive your response by December 10, 2002, so the County and the City can take action on their scheduled regular agendas to approve the settlement amendment modifications, under the County's Phase 2 Access Plan, capacity is allocated to the carriers beginning on April 1 of each year to be used through March 31 of the succeeding year. Normally, the County attempts to complete the allocation process 60 to 90 days in advance of April 1 in order to allow the air carriers time to make any necessary schedule changes. In order to complete the process of allocating the new capacity by April 1 of 2003, it is important that we receive FAA's response to this letter at the earliest possible date.

intermittent, at best and, so far as we are aware, there is no scheduled commercial service at that airport at the present time. The history of the adoption and final form of the Long Beach regulations is, as FAA is aware, also unique, but Long Beach is not presently proposing a regulatory increase in the number of operations permitted under its regulations and, until just recently, had not experienced sufficient demand from air carriers to even fully allocate the "slots" presently authorized by its regulations.

It seems equally clear to us that, since the settlement amendment (June 25, 2002) and the settlement amendment modifications (proposed for action on December 10, 2002) only increase capacity and do not adversely affect airport or aircraft safety, the settlement amendment and settlement amendment modifications are entitled to the same "grandfathered" status under the plain language of 49 U.S.C.A. §47524(d)(4) and are exempt from further compliance with ANCA or FAR Part 161.

Finally, the County also believes that the amendment is plainly non-discriminatory, fair and reasonable on its face within the meaning of the County's sponsor assurances in its airport grant agreements with the FAA. In this respect, we do wish to make clear that the opinion requested by this letter would, at least at this stage of the process, relate only to the terms of the settlement amendment. Issues relating to questions regarding the *allocation* of the new capacity authorized by the settlement amendment are presently being addressed by the County in the context of possible amendments to the *Phase 2 Access Plan*. Since the County has not yet made final decisions regarding its intended means of allocation, we recognize that FAA cannot yet comment on those allocation issues. We do intend, however, to continue to solicit input from FAA staff as that process proceeds to ensure that the County satisfies its goals, and those of the FAA, in ensuring that the allocation methodology is fair, reasonable and not unjustly discriminatory. On October 28, 1985, the then Chief Counsel of FAA provided a letter to us, on behalf of the County, concluding that the 1985 settlement agreement was not unjustly discriminatory and did not otherwise violate the County's AIP sponsor assurances, but reserved the right to comment further on any implementing allocation process. The County understands that the FAA may wish to reserve judgment on the allocation process until it is completed in this instance as well.

CONCLUSION

The significant improvements that have occurred in aircraft noise reduction technology since 1980, and the cooperation of the local communities affected by or concerned with the environmental effects of airport operations, has permitted the County to significantly increase air service opportunities at JWA. From an outdated and facilities strained airport which served a total of two commercial carriers with a maximum of 41 permitted flights per day in 1980, JWA has been able to grow to a modern airport which presently accommodates 10 commercial air

carriers and three commuter airlines operating as many as 130 daily flights.[3] This has been accomplished at an airport that operates on a total of less than 500 acres and one (5700 foot) runway suitable for air carrier operations. The settlement amendment modifications represents the latest effort by the County, the City and the citizens of Orange County to further recognize the important contributions that the aviation industry has made to noise reduction, and the local environmental benefits which have resulted from their aircraft investments and their cooperation for the past 17 years in successfully implementing the 1985 Settlement Agreement.

All of the settling parties, including the County, recognize and are respectful of the legitimate federal interest in aviation matters; and the cooperation, assistance and guidance which the County has received from FAA staff during that period has been of critical importance to the County's success in increasing airline service at JWA. Once again, FAA's assistance in that process is critically important, and we hope that the agency will be able to provide us with the requested opinion letter at an early date so that we can proceed to the allocation and operation of the capacity enhancements afforded by the settlement amendment and settlement amendment modifications.

Again, if we can answer any questions, or provide you with any additional information, please contact us at your convenience.

Sincerely,

Alan L. Murphy
Airport Director

cc: Assistant Airport Director
Deputy Director, Public Affairs
Deputy Director, Operations
Deputy Director, Finance and Administration
Deputy Director, Facilities
Deputy Director, Business Development
Manager, Access and Noise
Access and Noise Office
County Counsel
Airport Special Counsel

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[3] There have, since 1980, been a number of other air carriers and commuter airlines which have served JWA but left the airport due to mergers, bankruptcy or business decisions by the individual carriers.

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.

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 ("AAIA") 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 amendments[3] of the 1985 Settlement Agreement and the proposed amendments.

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

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

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

2010, and increasing the MAP level served at the Airport from 10.3 MAP to 10.8 MAP, beginning on January 1, 2011, through December 31, 2015;

- Continuing to allow the permitted number of operations by Class E Aircraft to be unlimited, except that the combined number of passengers served by commuter aircraft, Class E Aircraft and Class A Aircraft in regularly scheduled commercial service will not exceed 10.3 MAP, beginning on January 1, 2003, through December 31, 2010, and 10.8 MAP, beginning January 1, 2011, through December 31, 2015;
- Increasing the number of cargo flights from JWA from two Class A ADD cargo flights to a total of four Class A ADD cargo flights, for a total of 89 Class A ADD flights, beginning on January 1, 2003, through December 31, 2015;
- Providing the passenger commercial carriers with the opportunity to use up to two of the Class A ADD cargo flights if there is no demand for these cargo flights by cargo air carriers; and
- Increasing the permitted number of commercial passenger loading bridges at JWA from 14 loading bridges to 20 loading bridges, through December 31, 2015, and providing up to two hardstand positions[4] 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 amendment[5] 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).

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

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

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

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

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

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

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

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

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

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

Resolution No. 85-255 at 8-9.

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

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

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

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

- In certifying the final EIR for the 1985 Master Plan project, the County Board stated that implementation of the project, as mitigated, was "essential to adequately serve the existing and future air traveling public at JWA, and to strike an appropriate, responsible and desirable balance between the community's need for reasonable air transportation services, and the consequences or potential consequences of related airport operations." Resolution No. 85-255 at 5.

- When the Board adopted the Access Plan for the first phase of the 1985 Master Plan project, it "reaffirm[ed] again its consistent and long-standing policies, goals and intent to strike a reasonable balance between the air transportation needs of the citizens of Orange County, and the need to impose reasonable restraints and regulations on the operation of JWA." Resolution No. 85-259 at 4-5.

- In the resolution approving the Phase 2 Access Plan, the Board stated that "the County's ability to continue to effectively regulate the development and use of JWA within the environmental parameters previously established by this Board necessitate the immediate adoption of the [sic] this Phase 2 Access Plan in order to protect the best interests of the County, its constituents and the air travelling public . . . ." Resolution No. 90-1161 at 5-6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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