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FEB 25 2003

CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

15 COUNTY OF ORANGE,
16 Plaintiff,

17 v.

18 AIR CALIFORNIA, *et al.*,
19 Defendants.

20 CITY OF NEWPORT BEACH,
21 Counterclaimant,

22 v.

23 COUNTY OF ORANGE; ORANGE COUNTY
BOARD OF SUPERVISORS; and DOES 1
through 1,000, Inclusive,
24 Counterdefendants.

26 AND RELATED COUNTERCLAIMS.
27
28

) No. CV 85-1542 TJH (MCx)
)
) EIGHTH SUPPLEMENTAL
) STIPULATION BY THE COUNTY OF
) ORANGE, CALIFORNIA, THE CITY OF
) NEWPORT BEACH, STOP POLLUTING
) OUR NEWPORT, AND THE AIRPORT
) WORKING GROUP OF ORANGE
) COUNTY, INC., AMENDING THE
) TERMS AND CONDITIONS OF THE
) PREVIOUS STIPULATIONS OF THOSE
) PARTIES AND REQUESTING A
) MODIFICATION OF AN EXECUTORY
) JUDGMENT OF THE COURT

) AND

) [PROPOSED] ORDER

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

2 1. In November 1985, the County of Orange and the Orange County Board of
3 Supervisors ("Board") (collectively, the "County"), the City of Newport Beach ("City"), Stop
4 Polluting Our Newport ("SPON"), and the Airport Working Group of Orange County, Inc.
5 ("AWG") (City, SPON and AWG are sometimes collectively referred to as "the City"), by their
6 respective counsel of record, entered into a stipulation to implement the settlement of the
7 longstanding dispute between the County and the City concerning the development and operation
8 of John Wayne Airport, Orange County (SNA) ("JWA") ("the 1985 Settlement Agreement"). The
9 parties are sometimes collectively referred to in this Eighth Supplemental Stipulation ("Amended
10 Stipulation") as the "Settling Parties". On December 15, 1985, the United States District Court
11 entered a final judgment ("the confirming judgment") pursuant to the 1985 Settlement Agreement.
12 The confirming judgment: (1) adjudicated that Environmental Impact Report 508/Environmental
13 Impact Statement ("EIR 508/EIS") was legally adequate for the "EIR 508/EIS Project" (as that
14 term is hereafter defined) under the California Environmental Quality Act ("CEQA"), the National
15 Environmental Policy Act ("NEPA"), and all relevant state and federal implementing regulations;
16 (2) adjudicated that all other claims, controversies and/or counterclaims were dismissed without
17 prejudice; and (3) contained specific provisions for enforcement of the 1985 Settlement
18 Agreement.
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22 2. The compromise settlement reached by the Settling Parties reflected, under all of the
23 circumstances, the individual judgments of the Settling Parties regarding an appropriate or
24 acceptable balance between demand for air travel services in Orange County and any adverse
25 environmental effects associated with the operation of JWA. The Settling Parties acknowledge that,
26 without the 1985 Settlement Agreement and confirming judgment, protracted litigation would have
27 continued and created an ongoing risk of impeding or preventing the County's development of
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1 JWA, and its ability to create additional access opportunities for commercial operators desiring to
2 use JWA.

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

10 4. In reaching the 1985 Settlement Agreement, the Settling Parties considered
11 operational and other factors applicable to JWA that are not applicable to any other airport. The
12 1985 Settlement Stipulation is site specific to JWA, premised upon its unique history, operational
13 characteristics and limitations. Specifically, the essential character of JWA as an airport facility,
14 both operationally and environmentally, is defined by the significant and substantial physical and
15 environmental constraints affecting public use of the facility, including, but not limited to, the
16 extremely confined airport area that includes a total of approximately five hundred and four (504)
17 acres, less than four hundred (400) acres of which are available for airfield operations, an extensive
18 highway and local street system that surrounds the area, and residential and commercial areas
19 located generally to the southeast, south, west, southwest, and north of the airport area, and
20 commercial areas to the east of the airport area.
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22

23 5. Regularly scheduled commercial service was first initiated at JWA in 1967, and
24 since the late 1960s, the County has regulated the use and operation of JWA by a variety of means
25 in an effort to control and reduce any adverse environmental impacts caused by aircraft operations
26 to and from JWA. These regulations have included such restrictions as: (i) strict noise-based
27 limitations on the type of aircraft which are permitted to use JWA, including both commercial and
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1 general aviation aircraft; (ii) a nighttime "curfew" on aircraft operations exceeding certain
2 specified noise levels; and (iii) limitations on the number of average daily commercial departures
3 which can occur at the facility, either directly or through a limit on the permitted number of annual
4 commercial passengers. Even prior to 1985, the controlled nature of the airport's operation, arising
5 from a wide range of political, environmental, social and economic considerations, had become
6 institutionalized to the extent that the regulated nature of the airport was a definitional component
7 of its character as an air transportation facility.
8

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

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

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

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

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

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

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

22 10. The three project case scenarios ("Scenarios") evaluated in EIR 582 proposed
23 modifications to some of the provisions of the 1985 Settlement Agreement, including an increase
24 in permitted operational and facility capacity and an extension of the term of the agreement. In
25 order to permit the Board and the City to determine the final terms of any amendments to the 1985
26 Settlement Agreement, the three Scenarios were each evaluated in the EIR to an equivalent level of
27 detail that would permit the County and the City to adopt amendments to the 1985 Settlement
28

1 Agreement consistent with all or a portion of any Scenario. Each of the three Scenarios proposed
2 for the County's and the City's consideration assumed modifications to the terms of the 1985
3 Settlement Agreement prior to December 31, 2005. Each of the three Scenarios contemplated
4 modifications that would increase noise regulated departures and passenger service levels.
5

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

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

- 12 (a) Accepted Addendum 582-1 to Final EIR 582 and approved the related
13 amendments to the Findings consistent with this Modified Amended
14 Stipulation as required by CEQA and CEQA GUIDELINES requirements;
15
16 (b) Approved modifications to the Amended Stipulation as reflected in the terms
17 and conditions of this Modified Amended Stipulation; and
18
19 (c) Authorized execution of this Modified Amended Stipulation after its
20 approval and execution by the City, SPON and AWG, and subject to the
21 Airport Director receiving a letter from the Federal Aviation Administration
22 ("FAA") which, in the opinion of Counsel, is substantially consistent, and in
23 concurrence, with the Airport Director's letter to the FAA Chief Counsel
24 dated December 3, 2002, stating that the modified Amended Stipulation is
25 consistent with federal law. A copy of the Airport Director's December 3,
26 2002, letter to the FAA is attached to this Stipulation as Exhibit A.
27

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

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

7 14. All conditions to the execution of this Amended Stipulation by each of the Settling
8 Parties have been satisfied including the issuance and receipt of the FAA Chief Counsel opinion
9 letter, a copy of which is attached as Exhibit B to this Stipulation.
10

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

- 14 (a) Recognizing that aviation noise management is crucial to the continued
15 increase in airport capacity;
- 16 (b) Modifying some restrictions on aircraft operations at JWA under the 1985
17 Settlement Agreement in a manner that would provide increased air
18 transportation opportunities to the air traveling public using JWA without
19 any adverse effect on aircraft safety;
- 20 (c) Continuing the County's historical protection of the environmental interests
21 and concerns of persons residing in the vicinity of JWA; and
22
- 23 (d) Maintaining a reasonable balance between air service and local
24 environmental impacts of that service in a manner that controls and
25 minimizes the County's risk of noise damage claims that otherwise might be
26 made against the County.
27
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1 These objectives are consistent with a long-standing and adopted policy of the
2 County to operate JWA in a manner that provides the maximum air transportation opportunities at
3 JWA, while ensuring that airport operations do not unreasonably result in adverse environmental
4 effects on surrounding communities.

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

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

- 14 (a) Defining all regulated passenger flights as Class A flights and eliminating
15 the Class AA Aircraft definition/distinction, effective upon execution of the
16 Modified Final Judgment by the Court. The definition/distinction for Class E
17 Aircraft is preserved unaffected by this Amended Stipulation;
- 18 (b) Increasing the number of regulated flights allocated to passenger
19 Commercial Carriers at JWA from seventy-three (73) ADDs to eighty-five
20 (85) ADDs, beginning on January 1, 2003, through December 31, 2015;
- 21 (c) Increasing the MAP level served at the Airport from 8.4 MAP to 10.3 MAP,
22 beginning on January 1, 2003, through December 31, 2010, and increasing
23 the MAP level served at the Airport from 10.3 MAP to 10.8 MAP, beginning
24 on January 1, 2011, through December 31, 2015;
- 25
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- 1 (d) Continuing to allow the permitted number of operations by "Exempt Aircraft"
2 (i.e., Class E Aircraft) to be unlimited, except that the combined number of
3 passengers served by Commuter Aircraft, Class E Aircraft and Class A
4 Aircraft in regularly scheduled commercial service will not exceed 10.3 MAP,
5 beginning on January 1, 2003, through December 31, 2010, and 10.8 MAP,
6 beginning January 1, 2011, through December 31, 2015;
- 8 (e) Increasing the number of cargo flights from JWA from two (2) Class A
9 ADD cargo flights to a total of four (4) Class A ADD cargo flights, for a
10 total of eighty-nine (89) Class A ADD flights, beginning on January 1, 2003,
11 through December 31, 2015;
- 13 (f) Providing the passenger commercial carriers with the opportunity to use up
14 to two (2) of the Class A ADD cargo flights if there is no demand for these
15 cargo flights by cargo air carriers; and
- 17 (g) Increasing the permitted number of commercial passenger loading bridges at
18 JWA from fourteen (14) loading bridges to twenty (20) loading bridges,
19 through December 31, 2015, and providing up to two (2) hardstand positions
20 for aircraft arriving at the Airport.

22 **III. DEFINITIONS**

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

25 18. "ADD" means "average daily departure," which is computed for purposes of the
26 Plan on an annual basis, from April 1 of each year during which the Plan is in effect, to March 31
27 of the following year. One ADD authorizes any person requiring ADDs for its operations at JWA
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1 to operate 365 (or 366 in any "leap year") Authorized Departures during each Plan Year, subject to
2 the definitions, provisions, conditions and limitations of this Amended Stipulation and
3 implementing regulations of the County. "ADD" includes all Class A departures, except
4 emergency or mercy flights, departures resulting from mechanical failures, emergency or weather
5 diversions to JWA necessary to reposition an aircraft into its normal scheduling rotation, the
6 repositioning of aircraft to another airport in connection with a published change in the previous
7 schedule of operations of the airline, test or demonstration flights authorized in advance by the
8 airport director, or charter flights by persons not engaged in regularly scheduled commercial
9 service at JWA.
10

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

| 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 |

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

1 aircraft.

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

| 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 |

15
16 In determining whether an aircraft is a Class E Aircraft, its noise performance at the
17 Departure Monitoring Stations shall be determined at each individual noise monitoring station, and
18 the aircraft must meet each of the noise monitoring station criteria, without "trade-offs," in order to
19 qualify as a Class E Aircraft.

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

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

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

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

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

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

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

1 relevant provisions of the Plan.

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

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

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

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

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

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

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

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

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

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

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

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

10 **A. FLIGHT AND MAP LIMITS**

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

14
15 37. No aircraft generating noise levels greater than that permitted for Class A
16 aircraft shall be permitted to engage in Regularly Scheduled Air Service at JWA.

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

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

22
23 40. In addition to, and beyond the eighty-five (85) Class A ADDs permitted
24 under Paragraph 35 above, beginning on January 1, 2003, through December 31, 2015, there shall
25 be a maximum of four (4) Commercial Cargo Class A ADDs permitted for Commercial Cargo Air
26 Carriers for a combined total maximum of eighty-nine (89) Class A ADDs (commercial and
27 cargo). A maximum of two (2) of the four (4) Commercial Cargo Class A ADDs may be allocated
28

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

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

6
7 **B. FACILITY CONSTRAINTS**

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

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

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

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

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

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

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

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

21 (e) Air Carrier aircraft regularly configured with ninety (90) or more
22 passenger seats may load and unload passengers by stairway or other
23 means not involving the use of loading bridges as the Airport
24 Director reasonably deems necessary to accommodate commercial
25 aircraft operations authorized by this Amended Stipulation during
26 any period where compliance with safety or security directives of any
27 federal agency with lawful jurisdiction over airport operations or
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1 activities [including, but not necessarily limited to, the Federal
2 Aviation Administration ("FAA") and the Transportation Security
3 Agency ("TSA")], imposes or adopts any safety or security directive
4 or requirement affecting the airport which impairs the full and
5 effective utilization of the loading bridges at the airport.
6

7 **C. OTHER STIPULATED PROVISIONS**

8 45. The existing curfew regulations and hours for JWA, contained in County
9 Ordinance 3505, and the provisions of paragraph 4, at page 62, of Board of Supervisors'
10 Resolution 85-255 (February 26, 1985), reducing the curfew exemption threshold to 86.0 dB
11 SENEL, shall remain in effect for no less than five (5) years past the end of the Project Period.
12 Nothing in this paragraph precludes or prevents the JWA Airport Director, his designated
13 representative, or some other person designated by the Board, from exercising reasonable
14 discretion in authorizing a regularly scheduled departure or landing during the curfew hours where:
15 (1) such arrival or departure was scheduled to occur outside of the curfew hours; and (2) the arrival
16 or departure has been delayed because of mechanical problems, weather or air traffic control
17 delays, or other reasons beyond the control of the operator. In addition, this paragraph does not
18 prohibit authorization of bona fide emergency or mercy flights during the curfew hours by aircraft
19 that would otherwise be regulated by the curfew provisions and limitations.
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22 46. In mitigation of the EIR 508/EIS Project, and for other reasons, the County
23 has adopted a "General Aviation Noise Ordinance" ("GANO") (County Ordinance 3505). One
24 principal policy objective of the GANO is to exclude from operations at JWA general aviation
25 aircraft that generate noise levels greater than the noise levels permitted for aircraft used by
26 Commercial Air Carriers. During the Project Period, the County shall maintain in effect an
27 ordinance that meets this basic policy objective. Nothing in this Amended Stipulation precludes
28

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

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

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

22 49. Upon execution of this Amended Stipulation, the Settling Parties, their
23 agents, officers, directors, elected officials and employees each agree to release, acquit and forever
24 discharge each other, their heirs, employees, officials, directors, supervisors, consultants and
25 successors-in-interest from any and all claims, actions, lawsuits, causes of action, liabilities,
26 demands, damages, costs, attorneys' fees and expenses which may arise from or concern the
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1 subject matter of this Amended Stipulation, including, but not limited to, the legal adequacy of EIR
2 582, the legal adequacy of the terms and conditions for the modification of the 1985 Settlement
3 Agreement and confirming judgment, and/or the legal adequacy of any of the amendments to the
4 Plan through the Project Period. Nothing in this release shall limit in any way the ability of any
5 Settling Party to enforce the terms, conditions and provisions of this Amended Stipulation and the
6 Modified Final Judgment.
7

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

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

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

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

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

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

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

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

| | | |
|----|-----------------|----------------------------------|
| 21 | FOR THE COUNTY: | Richard Oviedo |
| 22 | | Deputy County Counsel |
| 23 | | John Wayne Airport |
| 24 | | 3160 Airway Avenue |
| | | Costa Mesa, CA 92626 |
| 25 | with a copy to: | Michael Scott Gatzke |
| 26 | | Lori D. Ballance |
| 27 | | Gatzke Dillon & Ballance LLP |
| 28 | | 1921 Palomar Oaks Way, Suite 200 |
| | | Carlsbad, CA 92008 |

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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

1 Final Judgment, the Court shall issue an order, in the nature of specific performance of the
2 Modified Final Judgment, requiring the defaulting party to comply with the Modified Final
3 Judgment within a reasonable period of time. If the defaulting party fails to comply with the order,
4 any other Settling Party may then seek enforcement under any authorized processes of the Court.
5

6 **VI. TERM OF AGREEMENT**

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

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

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

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

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

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

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

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

16 (b) A trial or appellate court issues an order that has the effect of prohibiting the
17 County from implementing or enforcing any of the operational restrictions or
18 facilities limitations required by this Amended Stipulation; or
19

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

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

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

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

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

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1 **VII. MODIFICATION**

2 64. The limitations on Regulated Class A ADDs, MAP levels and facilities provided for
3 in this Amended Stipulation, the provisions of paragraphs 45 and 46 of this Amended Stipulation,
4 and the agreements of the City, SPON and AWG not to contest or impede implementation of the
5 EIR 582 Project (paragraph 47 of this Amended Stipulation), are fundamental and essential aspects
6 of this Amended Stipulation, and were agreed upon with full recognition of the possibility that
7 economic, demographic, technological, operational or legal changes not currently contemplated
8 could occur during the Project Period. It was in recognition of these essential aspects of this
9 Amended Stipulation, and the inability to accurately predict certain future conditions that the
10 Settling Parties have agreed to the specific and express provisions of paragraph 59 of this Amended
11 Stipulation. The Settling Parties further acknowledge that this Amended Stipulation provides for
12 the Settling Parties to perform undertakings at different times, and that the performance of certain
13 of the undertakings, once accomplished, could not be undone. Accordingly, except as provided
14 herein, the Settling Parties expressly waive any potential right to seek to modify or vacate the
15 terms of this Amended Stipulation or the Modified Final Judgment, except by written mutual
16 agreement.
17
18
19

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

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

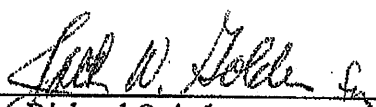
25 Dated: 2/3/03

26 By: 
27 Michael Scott Gatzke
28

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County Counsel, County of Orange

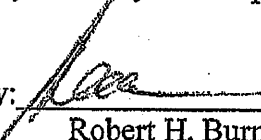
Date: 2/13/03

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

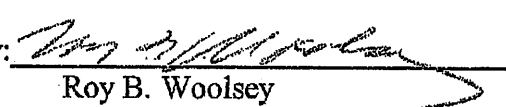
Dated: 2/12/03

By: 
Robert H. Burnham

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

Roy B. Woolsey

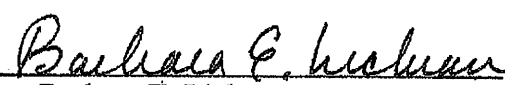
Dated: 2/12/03

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

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MODIFIED FINAL JUDGMENT

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

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

3. The Settling Parties have now presented to the Court an Eighth Supplemental Stipulation by the County of Orange, California, the City of Newport Beach, Stop Polluting Our Newport, and the Airport Working Group of Orange County, Inc., Amending the Terms and Conditions of the Previous Stipulations of those Parties ("Amended Stipulation") and Requesting a Modification of an Executory Judgment of the Court and [Proposed] Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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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: Feb. 25, 2003

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