

SUMMARY OF THE JWA PHASE 2 ACCESS PLAN

I. INTRODUCTION.

Under the 1985 John Wayne Airport (“JWA”) Stipulated Settlement Agreement (“Settlement Agreement”), as amended in 2003, regularly scheduled commercial users operating at JWA shall not serve more than 10.3 million annual passengers (“MAP”) in any year beginning on January 1, 2003 through December 31, 2010, and not more than 10.8 MAP beginning on January 1, 2011 through December 15, 2015. To maintain passenger traffic within those limits, and to balance the needs of the Orange County (“County”) community for adequate commercial air transportation facilities and the desire of the local community for environmentally responsible air transportation operations at JWA, the County, in its capacity as proprietor and certified operator of JWA, in addition to imposing noise restrictions¹ and implementing Permitted Commercial Operations Hours (commonly referred to as a “curfew”),² adopted limits on the noise levels of aircraft operating at JWA, and the number of passengers those aircraft could accommodate in any year.

The Plan allocates Average Daily Departures (“ADDs”), Authorized Departures, Seat Capacity, Passenger Capacity and Remain Overnight (“RON”) positions among regularly scheduled commercial users at JWA. The Plan also includes regulations regarding Affiliated Carriers and Associated Operating Groups, Capacity Withdrawals, Disqualifications and Reallocations, and penalties for exceeding allocations and violating other prohibitions.³ Other

¹ The County placed noise monitors, designated as NMS1S through NMS7S, at seven locations throughout Newport Beach and set noise limits at each monitored location. NMS1S, NMS2S and NMS3S are designated as Criterion Monitoring Stations for purposes of qualifying aircraft to operate at JWA. Under the Plan, if an operator violates the noise levels, the Airport Director “shall immediately disqualify that aircraft type from further service at *JWA* by that operator”. The Plan also provides for requalification of disqualified aircraft.

² The curfew limits Monday through Friday departures to 0700-2200 hours, Sunday departures to 0800-2200 hours, Monday through Saturday arrivals to 0700-2300 hours, and Sunday arrivals to 0800-2300 hours [all local time]. The County has also imposed Permitted Cargo Operations Hours at JWA which require that staging of Ground Support Equipment (“GSE”) on the ramp shall not commence prior to 1545 hours, no cargo aircraft arrivals will be allowed prior to 1600 hours, cargo aircraft departures will not occur later than 1945 hours, and all GSE will be returned to GSE staging areas no later than 1945 hours.

³ The Plan also includes extensive operations reporting requirements and implements mitigation measures identified earlier in connection with the County’s approval of the JWA 1985 Master Plan and related environmental documents, and projects approved by the County as amendments to the Settlement Agreement. This paper focuses only on the operational capacity allocations sections of the Plan.

than the allocation provisions, the remainder of the Plan became effective on August 15, 1990. The allocation provisions became effective on October 1, 1990. The Plan terminates on December 31, 2015.

II. DEFINITIONS.

To understand the allocations and the method by which the County made the allocations requires an understanding of a few basic terms:

ADD - Average Daily Departure - compiled on an annual basis, from April 1 of each year during which the Plan is in effect to March 31 of the following year.

Allocated Seat Capacity - The total number of annual passenger seats allowed to a Qualified Air Carrier and any supplemental allocations to the carrier. Allocated Seat Capacity is compiled by reference to the number of presumed (rather than actual) passenger seats aboard each aircraft operated by the carrier during any Plan year.

Authorized Departure - A single departure authorized by an allocation of a Regular ADD or Supplemental ADD, or any Class E departure.

Class A aircraft - Aircraft which (i) operate at gross takeoff weights at JWA not greater than 140,000 pounds for dual main landing gear configurations and 300,000 pounds for dual tandem landing gear configurations; and (ii) generate actual energy averaged SENEL levels, as measured at the Criterion Monitoring Stations, which are not greater than values (ranging from 93.0 dB SENEL to 101.8 dB SENEL) set forth in the Plan.

Class E aircraft - Aircraft which (i) operate at gross takeoff weights at JWA not greater than 140,000 pounds for dual main landing gear configurations and 300,000 pounds for dual tandem landing gear configurations; and (ii) generate actual energy averaged SENEL levels, as measured at the Criterion Monitoring Stations, which are not greater than values (ranging from 86.0 dB SENEL to 93.5 dB SENEL) set forth in the Plan.

Commuter Air Carrier - A carrier that operates regularly scheduled air service into and out of JWA for the purpose of carrying passengers, freight or cargo with Class E aircraft regularly configured with no more than 70 passenger seats and operating at a Gross Takeoff Weight of not more than 90,000 lbs.

dB SENEL - Decibels as measured and described by the Single Event Noise Exposure Level (“SENEL”) methodology contained in the California Noise Standards.⁴

⁴ *California Code of Regulations*, Title 21, §§ 5001, *et seq.*

Qualified Air Carrier - Any commercial air carrier or commercial cargo carrier authorized by the County to operate regularly scheduled air service at JWA under the terms of the Plan.

Qualified Commuter Carrier - Any commuter air carrier or commuter cargo carrier authorized by the County to operate regularly scheduled air service at JWA under the terms of the Plan.

Regulated ADDs - Class A and permanent Class E ADDs, and Supplemental Class A or Class E Authorized Departures.

III. FLIGHT ALLOCATION PROCEDURES.

Only Qualified Air Carriers and Qualified Commuter Carriers are allowed to operate at JWA. They must operate qualified Class A or Class E aircraft and stay within allocated ADDs and Authorized Departures limitations. The County makes Regular Class A ADDs Allocations, Seat Capacity Allocations, Commuter Carrier Passenger Capacity Allocations, Supplemental Allocations and RON Allocations. Allocations are distributed and assigned by aircraft "class". The allocations apply only to operations that carry passengers, and exclude departures without revenue passengers on board, such as aircraft repositioning for unscheduled maintenance and noise qualification tests. Allocations are considered by the County to be privileges which may be revoked, suspended or terminated by the County at will. They are not transferrable, and do not create property interests in those affected by the Plan. Unused ADDs and Seat Capacity allocations cannot be carried forward for use in any later Plan year. Generally, Associated Operating Groups are treated as a single Air Carrier for purposes of making allocations.

The County conducted its initial allocation process on November 20, 1989. On May 28, 2003, the County conducted a second allocation session to add new Regulated ADDs and permanent Class E ADDs to the then existing allocations. Each airline wishing to receive an allocation was represented by a company official with authority to make binding commitments during the allocation process and to accept the Regulated ADD allocations.

A. 1989 Allocation Procedures.

In November, 1989, the County engaged in an ADD allocation process, with a company official from each qualified airline present. The County initially offered eight [8] eligible carriers Regulated ADD allocations. Each carrier was asked to confirm that it would accept the initial allocation. ADDs not accepted at that stage were deemed to be "County ADDs". After the initial confirmations, a trade-out process was begun whereby each carrier, with the exception of Alaska Airlines and TWA (which did not have qualified Class AA equipment) had an opportunity to trade-out one [1] Class A ADD for two [2] Class AA ADDs, up to a maximum of 18 Class AA ADDs. After redistribution of the Class A ADDs, the County conducted a series of random withdrawal lotteries in which the County established Class A and Class AA ADDs and

Seat Capacity withdrawal priorities. Passenger seats were made eligible for withdrawal in increments of 13,000 seats, or “Seat Blocks”. Finally, after all withdrawals were confirmed by each carrier, the County permitted a one-time trade of Regulated ADDs among the qualified carriers. The result was a final allocation of 73 ADDs (39 Class A ADDs and 34 Class A ADDs) among ten carriers. The initial 1989 allocation protocol is described in more detail in Appendix A to the Access Plan.

B. 2003 Allocation Procedures.

On May 28, 2003, the County conducted a second allocation session to add new Regulated ADDs to the then existing allocations. At that time, the total number of allocations had remained at 73, however there had been changes in carriers operating at JWA and in the distribution of ADD allocations among them since the 1989 allocations were made. The County followed a similar protocol as in the 1989 allocation process, except that allocations were made for Class A and Class E ADDs rather than Class A and Class AA ADDs.⁵ The County made initial allocation offers to incumbent carriers and prospective new entrants, afforded carriers an opportunity to trade-out one Class A ADD for two Class E ADDs, redistributed the Regulated Class A ADDs, and allowed carriers to make a one-time trade of the new Regulated Class A and Class E ADDs. The County also conducted a random withdrawal priority lottery. As in the 1989 allocation process, each step of the 2003 allocation process was confirmed by a representative of each participating airline. Trades were confirmed in writing and ratified by the Airport Director and the County Board of Supervisors on June 3, 2003. The final allocations consisted of 93 ADDs (87 Class A ADDs and 4 Class A ADDs) distributed among twelve carriers. The 2003 allocation protocol and process are described in more detail in Appendices G and H to the Access Plan.

C. Regular Allocations.

All commercial air carrier Class A and Permanent Class E departures at JWA are regulated departures, and require an ADD allocation, including, without limitation, regularly scheduled, charter, maintenance and ferry flight departures.

1. Class A ADDs.

The Plan provides that regularly scheduled commercial users operating as passenger carriers shall not operate a total of more than 85 Class A ADDs, and regularly scheduled commercial users operating as Commercial Cargo Carriers shall not operate a total of more than four [4] Class A ADD cargo flights, for a total of 89 Class A ADDs in any Plan year. In addition, the Airport Director may allow a maximum of twelve [12] Permanent Class E ADDs.

⁵ In June 2003, the County amended the Plan to define all regulated passenger flights at JWA as Class A flights, eliminate the Class AA Aircraft definition/distinction, and add reference to permanent Class E ADDs.

The Plan allocates 63 Class A ADDs to ten [10] commercial air carriers through March 31, 2011, and twelve [12] Class A ADDs to ten [10] commercial air carriers through December 31, 2015. It reserves six [6] Class A ADDs for new entrants through March 31, 2011, and twelve [12] Class A ADDs for new entrants through December 31, 2015. The Plan also authorizes one [1] Class A ADD each for UPS and FedEx Express and reserves two [2] Class A ADDs for other cargo carriers through December 31, 2015.⁶ A list of Class A ADDs allocations and carriers is attached as Exhibit A.

2. Class E ADDs and Permanent Regular Class E ADDs.

There are no allocations of “Regular” Class E ADDs under the Plan. Under the Plan, an Air Carrier may request a trade-out of one [1] Regular Class A ADD for two [2] Permanent Class E ADDs. The Airport Director, in his discretion, may allocate up to 12 permanent Class E ADDs. Once twelve [12] permanent Class E ADDs have been allocated, the County maintains a waiting list for carriers wishing to trade-out Class A ADDs for Class E ADDs. As of the date of the Plan [November 18, 2008] the County had allocated four [4] Permanent Class E ADDs to Alaska Air Group and eight [8] Permanent Class E ADDs to Southwest Airlines through December 31, 2015. [See Exhibit A] If any Class A ADDs are traded for Permanent Class E ADDs, the County has the discretion to retain or reallocate the Class A ADD, or use the ADD to negotiate for entry of a new entrant Air Carrier (or for any combination of those actions).

In addition to the Permanent Class E ADDs allocated, any Qualified Air Carrier may request authority from the Airport Director to conduct Authorized Departures with aircraft which have been qualified and must operate as Class E Aircraft. All operations conducted by an Air Carrier at JWA during any Plan year, including its Class A, Permanent Class E and other Class E operations may not exceed, or create a significant risk of exceeding, the sum of: (1) its total annual Allocated Seat Capacity; and (2) any supplemental Seat capacity expressly allocated to it for use during that Plan Year. By request to the Airport Director, an Air Carrier may voluntarily and temporarily reduce its allocation of regular ADDs of any class for relocation by the County.

IV. AIR CARRIER SEAT CAPACITY ALLOCATIONS.

The County separately allocates Seat Capacity in order to serve two regulatory purposes: (1) to provide flexibility to Qualified Air Carriers serving JWA in selecting the mix of aircraft to be used at JWA; and (2) to provide a pre-determined and fair mechanism by which the County can reduce carrier capacity if the County determines that reductions are necessary to ensure adherence to the MAP limitations. Annual Air Carrier Seat Capacity Allocations at JWA through December 31, 2015 are shown in Exhibit A.

⁶ The Settlement Agreement Amendment provides Passenger Commercial Carriers an opportunity to use up to two Class A ADD cargo flights on a supplemental basis if there is no demand for those cargo flights by Cargo Air Carriers.

A. Air Carrier Passenger Capacity Allocations.

Air Carriers must request their actual anticipated Seat Capacity before each Plan Year. A carrier's combined Class A Class E Departures may not exceed its actual annual Seat Capacity allocation. Allocated Seat Capacity may be used only in the Plan Year for which it was allocated. Any unused Allocated Seat Capacity may not be carried forward for use in any succeeding Plan Year. An Air Carrier may voluntarily and temporarily reduce its allocation of Seat Capacity for any Plan Year for reallocation by the County.

B. Commuter Carrier Passenger Capacity Allocations.

Under the Plan, there is no pre-approved operational capacity for Qualified Commuter Carriers at JWA. Commuter carriers receive specific Passenger Capacity Allocations as the basis for their operations at JWA. The Airport Director makes a Passenger Capacity Allocation to each Qualified Commuter Carrier submitting a Passenger Capacity Allocation Request. In each Plan Year, the Airport Director reserves a capacity of five hundred thousand [500,000] annual passengers of the total MAP limitations for priority distribution to Qualified Commuter Carriers ("Commuter Passenger Capacity").

A Commuter Air Carrier may voluntarily reduce its Passenger Capacity Allocation for any Plan Year, and the County may reallocate the returned capacity. However, the number of authorized passengers relinquished may not exceed thirty percent (30%) of the total Passenger Capacity Allocation and Supplemental Passenger Capacity Allocation requested, and no Commuter Carrier may utilize the voluntary reduction provision more than three (3) times Passenger Capacity Allocation during the term of the Plan.

C. Supplemental Allocations.

As part of its original allocation process, the County reserved a right to make supplemental operational capacity allocations by means of Supplemental Authorized Departures, Supplemental Seat Capacity and Supplemental Commuter Passenger Capacity allocations. The Airport Director makes recommendations for supplemental allocations to the Board of Supervisors based on written requests by Qualified Air Carriers.

1. Supplemental Departures.

Class A and Class E supplemental departures are allocated equally among all requesting Qualified Air Carriers. If any Qualified Air Carrier requests less than its pro rata share of any supplemental allocation, the carrier will receive the number of departures requested and the remainder will be divided equally among the remaining requesting Qualified Air Carriers. Supplemental Allocation Periods are from (i) April 1 to September 30; (ii) October 1 to December 31; and (iii) January 1 to March 31 of each Plan year.

If the County has authorized supplemental departure allocations for use during a Plan Year and the authorized supplemental departures are not fully allocated, the Airport Director may allocate the previously authorized but unallocated supplemental departures to requesting Qualified Air Carriers during the remainder of the Plan year on a first-come/first-served basis.

2. Supplemental Passenger Capacity Allocations to Air Carriers.

Whenever the Airport Director advises a Qualified Air Carrier that it has received a Supplemental Departure allocation, in any class, he designates a specific Seat capacity limitation applicable to the allocation. To the extent practicable, the Seat Capacity allocation will be equal to the Seat Capacity necessary for operation of the aircraft type[s] the carrier designated in its Supplemental Authorized Departures request.

As with Supplemental Departures, Supplemental Seat Capacity is allocated equally among all requesting Qualified Air Carriers. If any Qualified Air Carrier requests less than its pro rata share, the Carrier will receive the Supplemental Seat Capacity requested and the remainder will be divided equally among the remaining requesting Qualified Air Carriers. If the County has authorized Supplemental Seat Capacity for use during a Plan Year and the authorized Supplemental Seat Capacity is not fully allocated, the Airport Director may allocate the previously authorized but unallocated Supplemental Seat Capacity to requesting Qualified Air Carriers during the remainder of the Plan year on a first-come/first-served basis

3. Supplemental Passenger Capacity Allocations to Commuter Carriers.

Regardless of whether the County has made an allocation of supplemental departures or supplemental Seat Capacity to commercial air carriers during any supplemental allocation period, the County may make supplemental Passenger Capacity Allocations to Qualified Commuter Carriers to be used during a specific plan year. Supplemental Passenger Capacity allocations are made to commuter carriers following the same procedures as for supplemental departure allocations to qualified air carriers.

Supplemental allocations may not be carried forward to a subsequent plan year and no allocation of supplemental Authorized Departures, Seat Capacity or Passenger Capacity may be made which will cause the MAP Limitation or the Regulated ADD Limitation to be exceeded during any plan year. If an Air Carrier ceases or abandons flight operations at JWA, or fails to conduct flight operations at JWA at a pro rata level of at least fifty percent (50%) of its total authorized Regular ADD level (or in the case of a Commuter Carrier, its Passenger Capacity allocation), the Carrier a Qualified Air Carrier.

D. Capacity Withdrawals.

The County also reserved the right to withdraw previously allocated operational capacity, *i.e.*, Seat Blocks, Supplemental Authorized Departures, Supplemental Passenger Capacity,

Regulated Adds and Passenger Capacity (generally in that order) if it determines it necessary to ensure that MAP limitations and Regulated ADD limitations are not exceeded during any Plan year. Withdrawal of Seat Blocks and Regulated ADDs would be in the order established by the 2003 withdrawal priority lottery. Withdrawal of supplemental allocations would be spread equally among carriers.

E. RON Allocations.

Because of the limited facilities available at JWA, the County limits the number, and controls the positions, of RON positions at JWA. Except for emergency circumstances, no more than 27 air carrier aircraft and no more than six commuter aircraft are permitted to RON at JWA. The County may permit Qualified Commuter Carrier aircraft to RON at locations other than the air carrier ramp. The County allocates RON positions for a period of one year, based on requests by carriers and in accordance with procedures established by the Plan.

V. PENALTIES AND SANCTIONS.

The Plan contains a complex mix of monetary and administrative penalties for violations of the Plan's provisions and prohibitions. Monetary penalties range from \$1,000 to \$10,000 for each violation of Permitted Commercial and Cargo Operations Hours, misuse of RON positions and allocations, operations with unqualified aircraft, and failure to file required notices and reports. Penalties for under-utilization or excess utilization of operational capacity, including ADDs, Authorized Departures, Seat Capacity and Passenger Capacity Allocations, range from loss of remaining Plan Year allocations to ineligibility to receive various allocations in subsequent Plan Years to disqualification and termination of tenancy and operating privileges as an Air Carrier at JWA.

One penalty that is of particular note is the penalty for noise level violations. If a person violates any of the Plan's prohibitions against excess noise with any aircraft type previously qualified and certified under the Plan, the Airport Director shall immediately disqualify that aircraft type from further service at JWA by that operator in the ADD noise classification for which the violation occurred. In addition, any person who violates any of the Plan's prohibitions against excess noise may be subject to an administrative penalty in an amount not to exceed five hundred thousand dollars (\$500,000). The Plan provides procedures and requirements for requalification of aircraft disqualified for noise level violations.

Finally, the Plan contains procedures for appealing and requesting review by the Airport Director and the Airport Commission of sanctions and penalties. By a majority vote, the County Board of Directors may undertake an independent review of a request for review and issues considered by, or a decision of, the Airport Commission.

EXHIBIT A
REGULAR
COMMERCIAL AIR CARRIER ADD ALLOCATIONS

Air Carriers	Class A ADDs through March 31, 2011	Class A ADDs through December 31, 2015
Alaska Air Group	7	1
American Airlines	14	0
Continental Airlines	8	1
Delta Airlines	8	1
Frontier Airlines, Inc.	1	3
Reserved for [New Entrant #1]	0	3
Reserved for [New Entrant #2]	3	1
Reserved for [New Entrant #3]	3	0
Mesa Airlines	2	0
Northwest Airlines	3	2
Southwest Airlines	2	2
United Airlines	10	1
US Airways	8	1
Total Regular Class A ADDs	69	16

REGULAR PERMANENT
CLASS E ADDs ALLOCATIONS

Air Carriers	Class E ADDs through December 31, 2015
Alaska Air Group	4
Southwest Airlines	8
County	0
Total Regular Permanent Class E ADDs	12

ANNUAL AIR CARRIER
SEAT CAPACITY ALLOCATIONS

Air Carriers	Allocated Passenger Seats through March 31, 2011	through December 31, 2015
Alaska Air Group	996,450	711,750
American Airlines	1,992,900	0
Continental Airlines	1,138,800	142,350
Delta Air Lines	1,138,800	142,350
Frontier Airlines	142,350	427,050
Reserved for [New Entrant #1]	0	427,050
Reserved for [New Entrant #2]	427,050	142,350
Reserved for [New Entrant #3]	427,050	0
Mesa Airlines	284,700	0
Northwest Airlines	427,050	284,700
Southwest Airlines	284,700	1,423,500
United Airlines	1,423,500	142,350
US Airways	1,138,800	142,350
Seats associated with ADDs not allocated		
Total Allocated Seat Capacity	9,822,150	3,985,800

13,807,950