**[ORAL ARGUMENT NOT SCHEDULED]**

**No. 17-1054**

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**UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA**

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NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,
SANTA MONICA AIRPORT ASSOCIATION, INC.,
BILL'S AIR CENTER, INC.,
KIM DAVIDSON AVIATION, INC.,
REDGATE PARTNERS, LLC, AND
WONDERFUL CITRUS LLC,
*Petitioners,*

v.

MICHAEL P. HUERTA, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,
*Respondent.*

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Petition for Review of an Order of the Federal Aviation Administration

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# INITIAL REPLY BRIEF FOR THE PETITIONERS

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November 13, 2017

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## GLOSSARY

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|---|---|
| AD | Petitioners Addendum |
| Agreement | Settlement agreement between FAA and the City, dated January 30, 2017 |
| Airport | Santa Monica Municipal Airport |
| ANCA | Airport Noise and Capacity Act |
| APA | Administrative Procedure Act |
| Central District | U.S. District Court for the Central District of California |
| City | City of Santa Monica, California |
| DOD | Department of Defense |
| FAA | Federal Aviation Administration |
| JA | Joint Appendix (deferred) |
| NEPA | National Environmental Policy Act |
| SMO | Santa Monica Municipal Airport |

## SUMMARY OF ARGUMENT

FAA could not surrender the valuable federal interest in SMO absent compliance with statutes, including ANCA, the Surplus Property Act, and NEPA. In defense of its failure to comply with these and other pertinent statutes, FAA argues that because it arose from a settlement, the Agreement should be viewed as essentially a private matter between it and the City, into which neither Petitioners nor the Court should intrude. But the very statutes it ignored were intended to ensure that the public interest in access to airports, in the environmental impacts of airport projects, and in the national air transportation system as a whole would be protected in, and govern the terms of, any such dealings with an airport sponsor.

Negotiating the release of airport obligations in secret meetings, and rushing into court for rubberstamp approval before anyone can question or object, are polar opposites of what FAA is mandated to do in the public interest. The Agreement which resulted from these unprecedented actions violates both the letter and the intent of federal law.[1] The releases and omissions therein comprise final agency

[1] Perhaps not entirely unprecedented. This Court admonished FAA on three recent occasions that it is not above the law: Taylor v. Huerta, 856 F.3d 1089, 1093 (D.C.Cir. 2017) (FAA did not "follow the statute as written"); Flyers Rights Education Fund v. FAA, 864 F.3d 738, 746 (D.C.Cir. 2017) (FAA "cannot hide the evidentiary ball"); Phoenix v. Huerta, 869 F.3d 963, 971 (D.C.Cir. 2017) (FAA "made it impossible for the public to submit views on the project's potential effects").

action, reviewable by this Court under Section 46110, and should be invalidated and vacated.

## ARGUMENT

In January 2017, FAA agreed to the closure of an airport, the reduction of its runway to bar operations by larger jet aircraft, and the release of the airport sponsor's multiple federal obligations. In a different setting, FAA would never dispute that each of these was a final action subject to Section 46110 review. Here, however, FAA would have the Court believe that these were not major agency actions; did not involve a final order; are not reviewable by this Court, but only by a district court; and as to the multiple statutory barriers to its actions identified by Petitioners and ignored by FAA, that Petitioners have no claim because there were in fact no releases of sponsor obligations, because there were no obligations to release, because the validity of those obligations had been challenged by the sponsor.

These arguments, dubious on their face, are not supported by an administrative record – because there is no record to speak of, and no explanation by FAA as to why that is. The Court is asked to consider thousands of pages of pleadings from preceding cases but is given no information as to FAA's own decision-making. While most of the FAA actions at issue are statutory violations, which no administrative record would resolve, the complete absence of such a

record speaks loudly to the lack of reasoned and informed decision-making. What is clear is that in its rush to agree to a settlement in the last days of the former administration, FAA either overlooked – or deliberately risked ignoring – statutory obligations, and now falls back on a district court's *pro forma* approval of a consent decree and *post hoc* rationalizations as substitutes. They are not.

Not surprisingly, the City, as beneficiary of the Agreement, concurs with FAA's procedural arguments, and adds rationalizations of its own, together with selective – and disputed – depictions of the Airport and its history. The former cannot aid FAA's case, and the latter have no bearing on the issues before this Court.

## I. FAA's Procedural Defenses Lack Merit

### A) The Agreement Is A Final Agency Order Subject To Review

FAA has abandoned its dismissal motion argument that the entry of a consent decree by the Central District inherently requires Petitioners to raise any objections in that docket, and that its mere existence deprived this Court of Section 46110 jurisdiction to review the Agreement. For the reasons previously stated, that claim was inconsistent with law. Petitioners Brief, 48-52.

FAA now suggests that Petitioners should nevertheless have objected in the Central District. FAA Brief, 12, 18-20. But because the Agreement was a final, appealable FAA order, Petitioners were under no obligation to do so. Moreover,

any objection would have been futile; that court approved the consent decree *pro forma* within 48 hours of the FAA/City request, and held that a third-party objection filed within 24 hours was untimely. Petitioners Brief, 51-52. It is clear that Petitioners were, or would have been, effectively denied the process that FAA purports was available, leaving no meaningful avenue of review.

FAA also continues to argue that this Court may not review the Agreement because it is not a final order. FAA Brief, 17-22. FAA insists that because the Agreement's effectiveness was conditioned on the entry of the consent decree, that decree thereby became the final order. But FAA cites no authority for that proposition.

That the consent decree served as a triggering device did not convert it into a final order. As previously noted, the Agreement specifically envisions that it is, and remains, the definitive document: "this Agreement upon entry of the Consent Decree shall resolve all claims by the Parties." JA____, AR1947 (emphasis added). See also Petitioners Brief, 45-46 (identifying exemplary terms of Agreement – e.g., that the City must "operate the Airport consistent with its obligations set forth in this Agreement" (emphasis added)). Once the decree was entered – if not earlier – the Agreement became effective, culminated FAA decision-making, determined rights and legal consequences, and was subject to Section 46110 review. Bennett v. Spear, 520 U.S. 154, 177-78 (1997).

FAA insists that it is not engaged in "procedural trickery" (FAA Brief, 18), but the implications of FAA's reasoning are alarming. According to FAA, it can exempt its actions from scrutiny under Section 46110 by cloaking them in a conditional consent decree, subject to far more limited review. If given this Court's imprimatur, this stratagem would upset basic principles of administrative law. Petitioners Brief, 51. Absent specific Congressional intent, all administrative action is reviewable. NRDC v. SEC, 606 F.2d 1031, 1043 (D.C.Cir. 1979). But if FAA's reasoning were adopted, other agencies could be expected to emulate FAA, insulating their actions from APA and other statutory review procedures, sharply limiting their public and judicial accountability.

The only authority cited by FAA, Turtle Island Restoration Network v. Department of Commerce, 672 F.3d 1160 (9th Cir. 2012) (FAA Brief, 19), simply does not assert a jurisdictional restriction – and emphasizes the limited opportunities for district and circuit review of a consent decree. Id., 1165. Rather, Turtle Island establishes that even if an objection in the Central District was a theoretical option (despite its record of denying intervention), that option does not procedurally foreclose – and is no substantive substitute for – *de novo* review under Section 46110, the uncontested standard of review in this Court.

FAA disputes the relevance of a few cases previously cited (FAA Brief, 21-22), but fails to acknowledge the considerable authority consistent with the

Agreement's finality. Petitioners Brief, 47-48. Nor were those cases atypical. For example, Hawai'i County Green Party v. Clinton, 980 F.Supp. 1160, 1165 (D.Haw. 1997) similarly held that even though a spacecraft launch required presidential authorization, NASA's actions were final when NASA decided to proceed and requested authorization – not when it subsequently was obtained. See also City of Angels Broadcasting v. FCC, 745 F.2d 656, n.32 (D.C.Cir. 1984) (agency award held final despite condition that recipient endure separate qualifications challenge).

**B) Vacatur Of The Agreement Would Provide Redress**

In search of an alternative justification to deny jurisdiction, FAA asserts that Petitioners lack standing because the Agreement's invalidation would not provide redress. FAA Brief, 23-26. Again, FAA is wrong.

FAA contends that the consent decree will continue to bind the signatories, irrespective of any decision by this Court. FAA Brief, 23. But that assertion is misleading at best. Petitioners Brief, n.22. For example, a decree should be modified if a subsequent court decision "represented a fundamental change in the legal predicates of the consent decree." Theriault v. Smith, 523 F.2d 601, 601 (1st Cir. 1975) (footnote omitted). Nor is the decree self-enforcing. JA____, AR1947. FAA would have this Court believe that, after a ruling favoring Petitioners, FAA would not alert the Central District thereof nor request that the decree be rescinded, but rather would actively seek its enforcement. That is not credible.

In any case, Petitioners need not show that redress is guaranteed. Rather, the threshold is "a significant increase in the likelihood that the plaintiff would obtain relief." Utah v. Evans, 536 U.S. 452, 464 (2002). That is especially true here, because Petitioners – who have a concrete interest in SMO – allege noncompliance with statutes. "The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability." Lujan v. Defenders of Wildlife, 504 U.S. 555, n.7 (1992). And this Court has made clear that an agency cannot moot an action by declaring that it will not change course: An argument that injury thus could not be redressed "strikes us as a breathtaking attack on the legitimacy of virtually all judicial review of agency action." Akins v. FEC, 101 F.3d 731, 738 (D.C.Cir. 1996), *vacated on other grounds*, 524 U.S. 11 (1998).[2]

A recent decision with significant parallels is Duluth v. National Indian Gaming Commission, 7 F.Supp.3d 30 (D.D.C. 2013). The Commission issued a notice to the effect that an agreement between Duluth and a Native American tribe was illegal; subsequently, the U.S. District Court in Minnesota rescinded a consent decree between them that was premised on that agreement. Duluth then challenged

[2] The City cites Dynaquest v. USPS, 242 F.3d 1070, 1075 (D.C.Cir. 2000) (City Brief, 28), but Dynaquest concerned a prior adjudication to which the appellant was a party and was *res judicata*. Those factors do not arise here.

the Commission's notice in this Circuit. The district court held that the asserted injury was redressable; as in this case, a ruling for Duluth would not automatically restore the *status quo*, but was "a necessary first step" – providing a basis for the Minnesota court to re-evaluate the decree's validity. Id., 42-43.

Further, although this Court does not have direct authority over the consent decree, it does have authority to protect its own jurisdiction, and to issue appropriate orders under the All Writs Act. This power is rarely invoked, because this Court rightfully expects that other courts "will not act in derogation of the orders and jurisdiction of this Circuit." Environmental Defense Fund v. EPA, 485 F.2d 780, 783 (D.C.Cir. 1973). But this power can and should be utilized if upon request of FAA (or the City) the Central District invokes the consent decree – despite a fundamentally incompatible holding by this Court that the Agreement is invalid. See also American Horse Protection Association v. Lyng, 690 F.Supp. 40, 42, 44 (D.D.C. 1988) ("a federal court can enjoin the prosecution of an action where the same issues are presented in another federal court," especially if a party "is attempting to divest this Court of the jurisdiction that it clearly has" and "attempt[ing] to evade the decisions of the courts of this jurisdiction").

This Court also has direct authority over both FAA and the City, given the City's intervenor status. A federal court, "in exercising its equity powers may

command persons properly before it to cease or perform acts outside its territorial jurisdiction." Steele v. Bulova Watch Co., 344 U.S. 280, 289 (1952).

FAA also argues that Petitioners "admitted" that they cannot obtain meaningful relief absent an injunction barring the City from truncating the runway – and that injunction having been denied, Petitioners now have no remedy available. FAA Brief, 23. By this reasoning, any party denied preliminary relief would lack redress, which is not the law. In any case, FAA misrepresents the record. Petitioners argued – correctly – in their March 6, 2017 motion (at 31-32) that they will suffer ongoing, irreparable harm. But the invalidation of the Agreement would provide a remedy – a "first step" towards restoring the *status quo*. FAA itself holds that absent the Agreement's releases, the City is obligated to maintain the complete Airport – and runway – until 2023 based on grant obligations, and in perpetuity based on deed obligations. Petitioners Brief, 14. See also Platinum Aviation v. Bloomington-Normal Airport Authority, docket no. 16-06-09, Final Decision and Order, 2007 WL 4854321, *15 (November 28, 2007) (FAA cannot "waive the grant assurances. … FAA is required to enforce the federal statutes").

In sum, jurisdiction in this Court is proper; the Agreement is a final agency order, subject to review under Section 46110; and the invalidation and vacatur thereof would provide cognizable redress to Petitioners.

## II. The Agreement Does Not Comply With Legal Prerequisites

### A) Agency Settlements Must Comply With The Law

FAA claims that it has unlimited authority to settle litigation, and that Petitioners cannot "second-guess" its judgment. FAA Brief, 26, 28. That is clearly wrong. FAA's, and any agency's, settlement authority is constrained by statute, especially if a settlement implicates non-party interests. Indeed, federal laws – such as those at issue – deliberately "constrain the exercise of the settlement power in a manner that is protective of third parties." 23 Op. OLC 126, 170 (1999).[3]

FAA attempts to distinguish only a handful of the authorities previously cited (FAA Brief, 29), and cites none of its own. The law is clear. Settlement authority stops "at the walls of illegality." Executive Business Media v. DOD, 3 F.3d 759, 762 (4th Cir. 1993). "[T]he general authority of the Justice Department … does not compensate for the [agency's] lack of authority." National Audubon Society v. Watt, 678 F.2d 299, n.18 (D.C.Cir. 1982). Agencies "may not … opt to act illegally. When the bounds of discretion give way to the stricter boundaries of law, administrative discretion gives way to judicial review." Scanwell

[3] FAA erroneously asserts that Petitioners claim it "was required to litigate its dispute with the City to the end." FAA Brief, 29. But Petitioners only allege that FAA must litigate – and settle – in compliance with law.

Laboratories v. Shaffer, 424 F.2d 859, 874 (D.C.Cir. 1970). See also Petitioners Brief, 15-17.

FAA also suggests that it need not comply with applicable statutes because a settlement was in the public interest. FAA Brief, 27. No authority is cited for the proposition that a statutory responsibility may be excused by invoking the public interest, without explicit or implicit basis in that statute; indeed, the true public interest is in the protections afforded by statute. "[P]ublic interest must yield to the obligation [of] … compliance with the relevant … laws." Davis v. Mineta, 302 F.3d 1104, 1116 (10th Cir. 2002). "The agency has, in effect, said that … the circumstances at hand warrant [its] walking away from the metes and bounds which otherwise constrain it. This we cannot sanction." Reuters v. FCC, 781 F.2d 946, 951 (D.C.Cir. 1986).[4]

**B) FAA Specifically Released Santa Monica From Federal Obligations**

FAA repeatedly urges that Petitioners lack a claim because it did not release the City from any obligations. FAA Brief, 16, 34, 37, 40, 41. The Agreement did not do so, the argument goes, because there were no obligations to release, because

[4] FAA also refers to the Central District's approval of the consent decree for the proposition that the Agreement is fair. FAA Brief, 28. Relevancy aside, FAA did not inform that court that its settlement authority was in doubt, and the Central District rubberstamped the decree within 48 hours. JA____, AR2023.

the City had contended in pending litigation that there were no obligations. This "reasoning" is circular and nonsensical on its face.

It is also irrelevant, because the Agreement includes an explicit release:

> The FAA agrees that the Airport Property shall be released from all covenants, reservations, restrictions, conditions, exceptions and reservations of rights imposed under the IOT and the Quitclaim Deed and the grant assurances imposed in 1994 upon the effectiveness of this Agreement.

JA____, AR1950.

Additionally, the Agreement obligates FAA "to provide such notice as required under 49 U.S.C. § 47153(c)." JA____, AR1950. That language refers to the notice and comment requirement for the release of deed-based obligations, and its inclusion in the Agreement is further evidence that FAA understood the Agreement to contain releases. Indeed, the entire Agreement is predicated on it constituting a release of City obligations; it would serve no purpose otherwise.

FAA does not explain how the mere fact that an airport sponsor disputes the validity of its obligations can unilaterally erase those obligations from existence; excuse FAA from the statutory requirements for releases; inhibit third parties from invoking their statutory rights; or prevent meaningful review of the obligations' existence or forgiveness. One must ask: on how many other occasions has FAA taken this self-defeating position? Certainly there is no evidence of such a precedent in reported sponsor challenges, including those brought by the City.

Contrast In re Santa Monica, docket no. 16-02-08, Director's Determination, 2008 WL 6895776, *26 (May 27, 2008) (FAA has been "assigned responsibility by Congress for enforcing … grant obligations. ... FAA did not and could not abdicate that responsibility"); AD419 ("the City has the right to appeal" but "pending judicial review, the City is required to continue to operate the airport"). As with many of FAA's current contentions, this is no more than a "bespoke" defense, created solely for this litigation in an attempt to justify FAA's otherwise inexplicable departure from statutory requirements.

FAA also asserts that any release-based claim is waived because Petitioners did not previously prove that a release occurred. FAA Brief, 34. But Petitioners repeatedly referred to the releases embodied in the Agreement, and now may reply to FAA's novel, separate, and wrong argument that those releases were actually a chimera. Avaya v. Telecom Labs, 838 F.3d 354, n.43 (3rd Cir. 2016).

As a last resort, FAA claims that the Agreement did not incorporate releases because a clause provided that nothing therein constituted an admission. FAA Brief, 34, 41; JA____, AR1952. But that is boilerplate, as typically seen when parties agree to settle claims without addressing the merits. Although the City did not concede that there were any obligations to release, FAA did not concede that there weren't any obligations to release – consistent with FAA's well-established positions that SMO was grant-obligated until 2023 and deed-obligated in

perpetuity. Petitioners Brief, 7. FAA cannot twist this language 180° to say something that it unequivocally does not.

The City also denies that the Agreement includes releases. See, e.g., City Brief, 4. But as with FAA, that is a new, self-serving litigation position. Previously, the City touted that the "Airport property [was] released from all deed restrictions." AD598. As described by the City Attorney, the Agreement:

> releases the airport land from all restrictions. ... That is the covenants, the … instrument of transfer, the quitclaim deed. Any cloud of title on airport land is released. And it's released on the effective date of the Agreement. And the effective date of the Agreement is when the court enters the consent decree.

See http://www.foxla.com/news/local-news/santa-monica-airport-to-close-in-2028 (c. 2:15). See also AD600, AD605.[5]

**C) FAA Failed To Comply With Specific Statutory Requirements**

**1) FAA Failed To Comply With ANCA**

Petitioners Brief explained that ANCA was enacted specifically to limit measures to impose access restrictions at airports – especially, but not only, for noise-reduction purposes – to those approved by FAA pursuant to ANCA's implementing regulations, 14 C.F.R. Part 161. Proposed restrictions must fulfill a strict, six-factor statutory test. Petitioners Brief, 20.

[5] The City also insists that it would have prevailed in litigation, but that is not only unsubstantiated, but irrelevant to whether the Agreement released City obligations.

Neither FAA nor the City disputes that the Part 161 process was not utilized, nor that the sole purpose of a shorter runway at SMO is to eliminate larger jets, in turn reducing noise (Petitioners Brief, 18). This case thus presents exactly the circumstances ANCA was intended to prevent: parochial, deliberate, noise-based access restrictions, implemented without the required sponsor Part 161 analysis or FAA review process. Friends of the East Hampton Airport v. East Hampton, 841 F.3d 133, 150-51 (2d Cir. 2016).

FAA has no serious defense to the disregard of this important statutory and regulatory regime. Its first response is simply nonsensical: that the Agreement does not deny access to aircraft "that can safely take off and land on the [3,500'] runway." FAA Brief, 31. True, once the restriction is in place. But it is the reduction in runway length itself that is the intended and impermissible denial of access. If accepted, this logic would eliminate virtually any obligation to comply with ANCA, provided an access restriction allowed some aircraft to operate. A decibel limit, for example, permits operation of compliant aircraft while barring others – but, as the Agreement itself notes, would be subject to ANCA. JA___, AR1949.[6] That a restriction is not total does not exempt it from ANCA.

[6] Closure of the Airport would, of course, deny access to all aircraft.

FAA also postulates a previously unknown exception to ANCA: that "[t]he physical reconfiguration of a runway and closure of an airport" are outside ANCA's scope, irrespective of purpose. FAA Brief, 31. FAA cites no authority, and directly contradicts both the broad reach of the statute and agency precedent. Petitioners Brief, 19-20. FAA repeatedly has advised that "any" new SMO access restrictions require ANCA compliance, and specifically warned that displaced thresholds – runway modifications to limit the distance available for landing – would trigger ANCA. AD401, AD461. Displaced thresholds require physical modifications – including restriping and the relocation of lights (Advisory Circular 150/5340-1K, § 2.9; Advisory Circular 150/5340-30H, § 2.1.2(b)) – and are indistinguishable from measures now being implemented pursuant to the Agreement to immediately truncate the SMO runway. "Any" restrictions "that have the effect of making access to an airport more restrictive are subject to the requirements of ANCA." AD395.

FAA also attempts to find support for a "physical reconfiguration" exception to ANCA in the notice requirements of 14 C.F.R. § 157.5 for runway/airport closure (FAA Brief, 31), but provides no explanation as to how a Congressional

mandate could have been invalidated by a prior agency regulation. Of course, it could not have been.[7]

In sum, the Agreement – which embodies a noise-based access restriction – is subject to the requirements of ANCA, and there is no dispute that the analysis and approval mandated by ANCA are absent. For this reason alone, the Agreement is invalid and should be vacated.

**2) FAA Failed To Comply With The Surplus Property Act**

**i) The Release Does Not Protect Or Advance The Civil Aviation Interests Of The United States**

FAA concedes that it was required to demonstrate that the releases embodied in the Agreement were "necessary to protect or advance the civil aviation interests of the United States," 49 U.S.C. § 47153(a)(2) (see also 14 C.F.R. § 155.3(a)(2)), but cites no evidence of compliance in the record – only a boilerplate statement in the Agreement itself that settlement is "in the interest of the public and civil aviation." FAA Brief, 16. There is no evidence that the public interest was actually considered. "Mere recitation that" agency action "is in the public interest gives the court no basis by which to judge the FAA's action." Delta Air Lines v. U.S., 490 F.Supp. 907, 916 (N.D.Ga. 1980).

[7] Nor was there any mention of Section 157.5 when FAA adopted Part 161. 56 Fed. Reg. 48661 (September 25, 1991).

FAA attempts to construct an explanation *post hoc* – that the net benefit of the Agreement is that absent a settlement, the Airport would be at risk of abrupt closure if the City prevailed in pending litigation, and the Agreement preserves a remnant of the Airport until 2028. FAA Brief, 35. This rationalization appears nowhere in the record, and should not be entertained by this Court. See, e.g., Clark County v. FAA, 522 F.3d 437, n.1 (D.C.Cir. 2008); Petitioners Brief, 24, n.14.

FAA's explanation also ignores its own, repeated guidance that a release is a rarity, justified only by extraordinary and well-documented circumstances, Petitioners Brief, 24-25, and its similar guidance that restrictions at SMO would have negative consequences throughout the Los Angeles region and beyond – hardly a "net benefit" for aviation. Petitioners Brief, 10.

FAA does briefly acknowledge the default requirement that revenue be reallocated to other airports – but asserts, without record support, that SMO's circumstances are unique. FAA Brief, n.6. In essence, FAA's disregard of a requirement for releases should be excused just this once, because FAA desired to quickly settle with the City. But an agency must "explain why speed is so important." CBS v. FCC, 785 F.3d 699, 710 (D.C.Cir. 2015). FAA has not. However, as FAA elsewhere has explained, "[a]n important factor" for a release is that any revenue "realized as a consequence … is committed to airport purposes." AD439.

Even if this Court were to consider *post hoc* rationales, FAA provides no analysis of the risk that the City would have prevailed in the Central District and Ninth Circuit. Contrary to FAA's suggestion that Petitioners have not met their burden (FAA Brief, 35), FAA here has the burden to show why it was not likely to prevail. AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 662 (1980) (plurality opinion) (agency bound by statute to show that action was "reasonably necessary and appropriate" was required to make findings and not rely on assumptions); American Society of Cataract and Refractive Surgery v. Sullivan, 772 F.Supp. 666, 673 (D.D.C. 1991), *vacated on other grounds*, 986 F.2d 546 (D.C.Cir. 1993) (factual record required; agency may not act "on basis of bureaucratic whim rather than solid evidence").

Nor does the record, consisting only of litigation documents, enable this Court to extrapolate a foundation for FAA's near-complete surrender. FAA suggests – and, not surprisingly, the City insists – that the City would have prevailed. FAA Brief, 6-9; City Brief, 31-39. But both merely parrot arguments previously made by the City, without acknowledging arguments to the contrary, or that full briefing had yet to occur. For example:

- FAA definitively ruled that SMO's grant-based obligations endured until 2023, after considering the objections now asserted by the City. JA____, AR959.

The City sought review and filed a brief, but neither FAA nor prospective intervenors had responded.

- In regard to deed-based obligations, the Ninth Circuit reversed a statute-of-limitations-based dismissal of the City's Quiet Title Act case, but the next step, as FAA acknowledges, was an "evidentiary hearing" in the Central District. FAA Brief, 7. The merits had not been adjudicated, nor did any further briefing occur. Additionally, as the City acknowledges, "[t]he meaning of the 1948 Instrument of Transfer was hotly contested." City Brief, 23 (emphasis added).[8]

**ii) The City's Rationalizations Are Neither Cognizable Nor Accurate**

The City seeks to inject into this proceeding the substance of its claims to no longer be grant/deed-obligated (City Brief, 7-8, 11-15, 32-35, 37-38), in apparent support of FAA's tardy rationale that the Agreement benefits aviation because the City might have prevailed. But this is not an appropriate forum to litigate those claims. No FAA analysis of its prospects appears in the record – and the City's self-serving evaluation cannot make up for their absence. See, e.g., North Carolina Utilities Commission v. FERC, 42 F.3d 659, 663 (D.C.Cir. 1994) (intervenor *post*

[8] The City asserts that the Ninth Circuit "suggested agreement with the City's interpretation" (City Brief, 16) but the merits of the case had not been briefed to or decided by the Ninth Circuit.

*hoc* rationalizations held inadmissible). Nor can or should this Court engage in the factual inquiries necessary to newly evaluate the merits of the City's claims.

That said, this Court should be on notice that many of the City's substantive assertions, including the merits of its Central District and Ninth Circuit cases, are manifestly wrong. For example:

- The City's claim that it was not aware until 2008 that FAA considered SMO to have perpetual obligations (City Brief, 15) – an issue relevant to the statute of limitations – was a matter of substantial dispute in both prospective testimony and documentary evidence, neither of which had yet been fully presented. JA___-____, AR533-35; AD320.
- The City asserts that its 1984 agreement with FAA released all of its deed-based obligations and authorized SMO's closure in 2015 (City Brief, 13, 36). In reality, only specified "parkland and residual land" were released. Santa Monica Airport Association v. Santa Monica, docket no. 16-99-21, Director's Determination, 2003 WL 1963858, n.12 (February 4, 2003). The Central District concurred. Santa Monica v. U.S., 2014 WL 1348499, *5 (C.D.Cal. 2014), *reversed on other grounds*, 650 Fed. Appx. 326 (9th Cir. 2016).[9]

[9] Further, FAA – through some of the same counsel now appearing – explained that the administrative decision cited by the City actually "did not address the rights and obligations of the parties after 2015," citing the Central District. Appellee Brief, Santa Monica v. U.S., 2015 WL 309352, *23 (January 15, 2015).

- The City claims that SMO poses "noise, pollution, and safety hazards." City Brief, 5. These are typical of generalized complaints heard from many municipalities adjacent to airports, and if sufficient to support closure, few airports would remain. FAA repeatedly has concluded that SMO is safe, and this Court has concurred. In re Santa Monica, 2008 WL 6895776, *45; Santa Monica v. FAA, 631 F.3d 550, 558 (D.C.Cir. 2011). SMO also has a "zero" off-airport noise impact area as defined by FAA and California regulations,[10] and has unique noise restrictions (grandfathered under ANCA), including curfews and maximums. AD395; JA____-____, AR1098-1107.
- The City also asserts that its obligations are simple matters of contract/property law – implying that FAA could not possibly refute its claims (City Brief, 32-35, 37-38). But "[a] grant agreement … is not an ordinary contract, but part of a procedure mandated by Congress," San Francisco v. FAA, 942 F.3d 1391, 1396 (9th Cir. 1991), and "Congress intended the FAA to exercise permanent authority over any proposed alienation of airport property," with doubts resolved in FAA's favor, Montara Water and Sanitary District v. County of San Mateo, 598 F.Supp.2d 1070, 1086 (N.D.Cal. 2009).

[10] See, e.g., https://www.smgov.net/uploadedFiles/Departments/Airport/Noise_Mitigation/2016%20CNEL%20Noise%20Contours.pdf. See also 14 C.F.R. Part 150, Appendix A; AD327.

In sum, even if the Court were to entertain the City's *post hoc* rationalizations, they are mere makeweight, facially incomplete and inaccurate, and are no substitute for statutory compliance by FAA.

**iii) The Release Prevents SMO From Carrying Out The Purpose For Which It Was Conveyed**

FAA concedes that 49 U.S.C. § 47153(a)(1) requires it to demonstrate that the releases embodied in the Agreement would not prevent SMO from carrying out the purpose for which it was conveyed. This is separate and in addition to the "net benefit" requirement discussed *supra*. Petitioners Brief, 26-28.

Again, the record is a nullity. FAA asserts that "the airport will remain open for many years past the date that the City threatened to shut down all operations" (FAA Brief, 37), but that is no answer. SMO was conveyed with its present-length runway, after considerable investment by the federal government. Its truncation will immediately deny access to a significant percentage of tenants and users. As previously noted, jets have operated at SMO for more than 50 years, and SMO is a "reliever" for general aviation, especially jets, that would otherwise utilize Los Angeles International Airport. Petitioners Brief, 5, 26-27. Further, the eventual complete closure of the Airport, unaddressed by FAA, would be directly inconsistent with the purposes for which SMO was conveyed, in perpetuity. JA___, AR1492 ("the entire landing area … shall be maintained for the use and benefit of the public").

### 3) FAA Failed To Comply With NEPA

FAA argues that the releases embodied in the Agreement are exempt from NEPA because i) NEPA is inapplicable to consent decrees, and ii) categorical exclusions need not be documented. FAA Brief, 38.

As an initial matter, FAA acknowledges that its Agreement, not later DOJ actions, are before this Court (Id., 13) but simply ignores the authority previously cited which shows the asserted exception to be inapplicable. Petitioners Brief, 29-30.[11]

FAA also misstates the law governing categorical exclusions. Once agency action has been determined to fall within a categorical exclusion, no further documentation is required – but that initial determination must be documented. Petitioners Brief, 30. See also Fund for Animals v. Espy, 814 F.Supp. 142, 151 (D.D.C. 1993) ("neither defendant nor any authorized subordinate made any contemporaneous determination as to whether the study falls within or without a categorical exclusion … [i]nvocation of the categorical exclusion for the first time by counsel after the complaint was filed in this case appears to be a *post hoc* rationalization, and is inadequate as a basis for review").

[11] FAA also contends that no major federal action is at issue because its future role is limited. FAA Brief, 39. But by authorizing runway truncation and airport closure, the Agreement clearly is a major federal action. Petitioners Brief, 29.

**4) FAA Failed To Consult With DOD**

FAA agrees that it was required – and failed – to consult with DOD by 14 C.F.R. § 155.9(b), but argues that Petitioners are not within the "zone of interests" to challenge its noncompliance. FAA Brief, 40. Again, FAA largely ignores most of the authority previously cited (Petitioners Brief, 35-36), challenging a single citation but not general principles.

But this requirement – derived from the Surplus Property Act – benefits Petitioners. "All property transferred for airport purposes shall be used and maintained for the use and benefit of the public." Public Law 80-289. SMO tenants and users certainly fall within that zone. NRDC v. Patterson, 791 F.Supp. 1425, 1430-31 (E.D.Cal. 1992).[12] Moreover, parties need only be affected by the specific requirement invoked; Petitioners will be impacted by the truncation and closure that will occur because of FAA's noncompliance. Air Reduction v. Hickel, 420 F.2d 592, 594 (D.C.Cir. 1969); Desert Citizens Against Pollution v. Bisson, 231 F.3d 1172, 1179 (9th Cir. 2000).

[12] FAA cites Lexmark International v. Static Control Components, 134 S.Ct. 1377 (2014). FAA Brief, 40. Lexmark actually confirms that the overall purposes of a statute are significant for zone analysis purposes. Permapost Products v. McHugh, 55 F.Supp.3d 14, n.6 (D.D.C. 2014).

**5) FAA Failed To Provide Public Notice and Comment**

FAA also concedes that it failed to provide for public notice and comment. Its only defense is that the releases embodied in the Agreement would not actually result in property being utilized for nonaeronautical purposes, and thus notice and comment were not required. FAA Brief, 41. That is untrue. Although the Agreement provides for an avigation easement so long as the Airport is open, the releases allow the City to immediately use the truncated portions of the runway for compatible nonaeronautical uses, and to close the entire Airport after 2028, without any further approvals. JA____, AR1948.

**6) FAA Failed To Comply With Its Other Obligations**

FAA claims that it has not waived statutory obligations applicable to SMO (FAA Brief, 41), but fails to explain how the Agreement – which purports to make applicable to SMO only six of the 30+ required assurances – adequately protects aeronautical users or is consistent with 49 U.S.C. § 47107. For example, FAA asserts that assurance no. 22 – which prohibits economic discrimination – "is expressly referenced and incorporated." FAA Brief, 44. But the Agreement extends this protection only to "aeronautical service providers," not all aeronautical users, as required by the statute, and the City explicitly insists that other users are unprotected. Petitioners Brief, 41-42.

The City also claims that it was not "released" from assurances because the Agreement requires it to operate SMO until 2028 (City Brief, 38), but runway truncation aside, the City ignores the fact that the Agreement specifically released all of its prior assurances and subjects its ongoing operation of the Airport to only a selective, incomplete set of assurances (JA____, AR1950). And even these are to be administered other than through the FAA's 14 C.F.R. Part 16 compliance process, which was established to ensure the preservation of the public interest in federally-assisted airports.[13]

Finally, FAA asserts that it can interpret 14 C.F.R. § 157.5(b)(2) to require only 30-days' notice of runway truncation, even though there is an unambiguous 90-day notice requirement to "realign" or "alter" a runway. 14 C.F.R. §§ 157.3(b), 157.5(a)(1). While not the most significant issue in this case, FAA's misinterpretation is meaningful, because its effort to deny even this obvious error is illustrative of the haste and disregard for basic legal requirements that characterize the entire Agreement.

**Conclusion**

FAA's attempts to position this case in a manner contrary to anything it has ever done before vis-à-vis airports, and to deny the very existence of matters

[13] FAA does not address whether Part 16 remains applicable to SMO. Petitioners Brief, 19. See also Amicus Brief of Aircraft Owners and Pilots Association, 9-10.

within this Court's jurisdiction, underline the significance of this review – and of vacatur as the remedy. For decades, FAA has emphasized the importance of – and the necessity of maintaining – SMO as a fully-functional airport. In prior litigation FAA explained that:

> The airport serves an important role in the regional and national system of air transportation and air commerce. It has a vital and critical role in its function as a general aviation reliever airport for the primary airports in the area.

AD212. See also Appellee Brief, Santa Monica v. U.S., 2015 WL 309352, *5; AD320 (FAA "has no intention of consenting to the use of this property for other than airport purposes and will insist on the City of Santa Monica complying with its contractual obligations"). FAA not only recently ruled that SMO is grant-obligated through 2023, but for decades has held that SMO is deed-obligated in perpetuity. Petitioners Brief, 7. See also AD232, AD309, AD545.

So why did FAA depart from SMO-specific as well as overall precedent by entering into the Agreement and releasing the City of public obligations? The record provides no answers; it is a virtual nullity, offering no explanations for the Agreement, much less for how FAA may avoid statutory mandates such as ANCA, the Surplus Property Act, and NEPA. FAA's desire to settle litigation remains an unsupported abstraction in this record – and, for the reasons discussed, would provide no valid legal basis for the releases in any event.

The Agreement should be vacated. This is not a case in which remand is appropriate. Petitioners Brief, 52-53. The majority of Petitioners' claims do not implicate matters of agency discretion, for which agency explication would be useful. Moreover, any new actions, such as a full ANCA analysis and review, would require years to conclude; in any interim, FAA should not benefit from its noncompliance with – indeed, open defiance of – its obligations. And neither FAA nor the City has denied that if this Court rules for Petitioners (as it should), vacatur would be appropriate.

For the reasons presented, the petition should be granted and the Agreement invalidated and vacated, along with all other necessary and proper relief.

Respectfully submitted,

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Dated: November 13, 2017

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## CERTIFICATE OF COMPLIANCE

I certify that this reply brief complies with the type requirements of FRAP 32 and Circuit Rule 32 because, excluding the parts of the document exempted by the rules, it contains 6,489 words, and was prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of November 2017, I electronically filed the foregoing reply brief with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the appellate CM/ECF system. Service was accomplished on all counsel through the CM/ECF system.

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# REPLY ADDENDUM

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## CHAPTER 111—GENERAL PROVISIONS

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1651. Writs.
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AMENDMENTS

1994—Pub. L. 103–465, title III, § 321(b)(1)(B), Dec. 8, 1994, 108 Stat. 4946, added item 1659.

1990—Pub. L. 101–650, title III, § 313(b), Dec. 1, 1990, 104 Stat. 5115, added item 1658.

1984—Pub. L. 98–620, title IV, § 401(b), Nov. 8, 1984, 98 Stat. 3357, added item 1657.

### § 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 342, 376, 377 (Mar. 3, 1911, ch. 231, §§ 234, 261, 262, 36 Stat. 1156, 1162).

Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

''The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party.''

Such section 376 provided:

''Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.''

Such section 377 provided:

''The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.''

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writs of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.

The provision in section 377 of title 28, U.S.C., 1940 ed., authorizing issuance of writs of scire facias, was omitted in view of rule 81(b) of the Federal Rules of Civil Procedure abolishing such writ. The revised section is expressive of the construction recently placed upon such section by the Supreme Court in *U.S. Alkali Export Assn. v. U.S.*, 65 S.Ct. 1120, 325 U.S. 196, 89 L.Ed. 1554, and *De Beers Consol. Mines v. U.S.*, 65 S.Ct. 1130, 325 U.S. 212, 89 L.Ed. 1566.

1949 ACT

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, inserted ''and'' after ''jurisdictions''.

WRIT OF ERROR

Act Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990, provided that: ''All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error.''

### § 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 725 (R.S. § 721).

''Civil actions'' was substituted for ''trials at common law'' to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

### § 1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 399 (Mar. 3, 1911, ch. 231, § 274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956).

Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

### § 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases person-

## APPENDIX A TO PART 150—NOISE EXPOSURE MAPS

PART A—GENERAL

Sec. A150.1 Purpose.
Sec. A150.3 Noise descriptors.
Sec. A150.5 Noise measurement procedures and equipment.

PART B—NOISE EXPOSURE MAP DEVELOPMENT

Sec. A150.101 Noise contours and land usages.
Sec. A150.103 Use of computer prediction model.
Sec. A150.105 Identification of public agencies and planning agencies.

PART C—MATHEMATICAL DESCRIPTIONS

Sec. A150.201 General.
Sec. A150.203 Symbols.
Sec. A150.205 Mathematical computations.

PART A—GENERAL

*Sec. A150.1 Purpose.*

(a) This appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. It also identifies land uses which, for the purpose of this part are considered to be compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of the FAA's Integrated Noise Model (INM) or an FAA approved equivalent, for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, under this part, it should be accomplished in accordance with Sec. A150.5 of this appendix.

*Sec. A150.3 Noise descriptors.*

(a) *Airport Noise Measurement.* The A-Weighted Sound Level, measured, filtered and recorded in accordance with Sec. A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) *Airport Noise Exposure.* The yearly day-night average sound level (YDNL) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise around airports.

*Sec. A150.5 Noise measurement procedures and equipment.*

(a) Sound levels must be measured or analyzed with equipment having the ''A'' frequency weighting, filter characteristics, and the ''slow response'' characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled ''Precision Sound Level Meters'' as incorporated by reference in part 150 under §150.11. For purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in IEU 179, are acceptable.

(b) Noise measurements and documentation must be in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI 51.13, dated 1971 as revised 1979, entitled ''ANS—Methods for the Measurement of Sound Pressure Levels''; ARP No. 796, dated 1969, entitled ''Measurement of Aircraft Exterior Noise in the Field''; ''Handbook of Noise Measurement,'' Ninth Ed. 1980, by Arnold P.G. Peterson; or ''Acoustic Noise Measurement,'' dated Jan., 1979, by J.R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels ($L_{AM}$); for computation or validation of the yearly day-night average level ($L_{dn}$), measurements must be reported in sound exposure level ($L_{AE}$), as defined in Sec. A150.205 of this appendix.

PART B—NOISE EXPOSURE MAP DEVELOPMENT

*Sec. A150.101 Noise contours and land usages.*

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop $L_{dn}$ contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than $L_{dn}$ 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and indentify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of $L_{dn}$ 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the $L_{dn}$ 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the $L_{dn}$ 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The $L_{dn}$ 70 dB noise contour and data related to $L_{dn}$ 70 dB contour. When determinations on land use compatibility using Table 1 differ between $L_{dn}$ 65–70 dB and the $L_{dn}$ 70–75 dB, determinations should either use the more conservative $L_{dn}$ 70–75 dB column or reflect determinations based on local needs and values.

(4) Estimates of the number of people residing within the $L_{dn}$ 65, 70, and 75 dB contours.

TABLE 1—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

| Land use | Yearly day-night average sound level ($L_{dn}$) in decibels | | | | | |
|---|---|---|---|---|---|---|
| | Below 65 | 65–70 | 70–75 | 75–80 | 80–85 | Over 85 |
| RESIDENTIAL | | | | | | |
| Residential, other than mobile homes and transient lodgings | Y | N(1) | N(1) | N | N | N |
| Mobile home parks | Y | N | N | N | N | N |
| Transient lodgings | Y | N(1) | N(1) | N(1) | N | N |
| PUBLIC USE | | | | | | |
| Schools | Y | N(1) | N(1) | N | N | N |
| Hospitals and nursing homes | Y | 25 | 30 | N | N | N |
| Churches, auditoriums, and concert halls | Y | 25 | 30 | N | N | N |
| Governmental services | Y | Y | 25 | 30 | N | N |
| Transportation | Y | Y | Y(2) | Y(3) | Y(4) | Y(4) |
| Parking | Y | Y | Y(2) | Y(3) | Y(4) | N |
| COMMERCIAL USE | | | | | | |
| Offices, business and professional | Y | Y | 25 | 30 | N | N |
| Wholesale and retail—building materials, hardware and farm equipment. | Y | Y | Y(2) | Y(3) | Y(4) | N |
| Retail trade—general | Y | Y | 25 | 30 | N | N |
| Utilities | Y | Y | Y(2) | Y(3) | Y(4) | N |
| Communication | Y | Y | 25 | 30 | N | N |
| MANUFACTURING AND PRODUCTION | | | | | | |
| Manufacturing, general | Y | Y | Y(2) | Y(3) | Y(4) | N |
| Photographic and optical | Y | Y | 25 | 30 | N | N |
| Agriculture (except livestock) and forestry | Y | Y(6) | Y(7) | Y(8) | Y(8) | Y(8) |
| Livestock farming and breeding | Y | Y(6) | Y(7) | N | N | N |
| Mining and fishing, resource production and extraction | Y | Y | Y | Y | Y | Y |
| RECREATIONAL | | | | | | |
| Outdoor sports arenas and spectator sports | Y | Y(5) | Y(5) | N | N | N |
| Outdoor music shells, amphitheaters | Y | N | N | N | N | N |
| Nature exhibits and zoos | Y | Y | N | N | N | N |
| Amusements, parks, resorts and camps | Y | Y | Y | N | N | N |
| Golf courses, riding stables and water recreation | Y | Y | 25 | 30 | N | N |

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM = Standard Land Use Coding Manual.
Y (Yes) = Land Use and related structures compatible without restrictions.
N (No) = Land Use and related structures are not compatible and should be prohibited.
NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
(5) Land use compatible provided special sound reinforcement systems are installed.
(6) Residential buildings require an NLR of 25.
(7) Residential buildings require an NLR of 30.
(8) Residential buildings not permitted.

*Sec. A150.103 Use of computer prediction model.*

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved methodology or computer program, such as the Integrated Noise Model (INM) for airports or the Heliport Noise Model (HNM) for heliports. In considering approval of a methodology or computer program, key factors include the demonstrated capability to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) Except as provided in paragraph (c) of this section, the following information must be obtained for input to the calculation of noise exposure contours:

(1) A map of the airport and its environs at an adequately detailed scale (not less than 1 inch to 2,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

(c) For heliports, the map scale required by paragraph (b)(1) of this section shall not be less than 1 inch to 2,000 feet and shall indicate heliport boundaries, takeoff and landing pads, and typical flight tracks out to at least 4,000 feet horizontally from the landing pad. Where these flight tracks cannot be determined, obstructions or other limitations on flight tracks in and out of the heliport shall be identified within the map areas out to at least 4,000 feet horizontally from the landing pad. For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and the duration in minutes of the hover operation shall be identified. The other information required in paragraph (b) shall be furnished in a form suitable for input to the HNM or other FAA approved methodology or computer program.

*Sec. A150.105 Identification of public agencies and planning agencies.*

(a) The airport proprietor shall identify each public agency and planning agency whose jurisdiction or responsibility is either

wholly or partially within the $L_{dn}$ 65 dB boundary.

(b) For those agencies identified in (a) that have land use planning and control authority, the supporting documentation shall identify their geographic areas of jurisdiction.

PART C—MATHEMATICAL DESCRIPTIONS

*Sec. A150.201 General.*

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level ($L_{dn}$), the data necessary for its calculation, and the methods for computing it.

*Sec. A150.203 Symbols.*

The following symbols are used in the computation of $L_{dn}$;

| Measure (in dB) | Symbol |
|---|---|
| Average Sound Level, During Time T | $L_T$ |
| Day-Night Average Sound Level (individual day) | $L_{dni}$ |
| Yearly Day-Night Average Sound Level | $L_{dn}$ |
| Sound Exposure Level | $L_{AE}$ |

*Sec. A150.205 Mathematical computations.*

(a) Average sound level must be computed in accordance with the following formula:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\int_O^T 10^{L_A(t)/10}\,dt\right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; $L_A(t)$ is the instantaneous time varying A-weighted sound level during the time period T.

NOTE: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\sum_{i=1}^{n} 10^{L_{AEi}/10}\right] \quad (2)$$

where $L_{AEi}$ is the sound exposure level of the i-th event, in a series of n events in time period T, in seconds.

NOTE: When T is one hour, $L_T$ is referred to as one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt + \int_{0700}^{2200} 10^{L_A(t)/10}\,dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10}\,dt\right)\right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10}\frac{1}{365}\sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where $L_{dni}$ is the day-night average sound level for the i-th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE} = 10 \log_{10}\left(\frac{1}{t_o}\int_{t_1}^{t_2} 10^{L_A(t)/10}\,dt\right) \quad (5)$$

where $t_o$ is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval $t_1$ to $t_2$.

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

[Doc. No. 18691, 49 FR 49269, Dec. 18, 1984; 50 FR 5064, Feb. 6, 1985, as amended by Amdt. 150–1, 53 FR 8724, Mar. 16, 1988; Amdt. 150–4, 69 FR 57626, Sept. 24, 2004]