City of Long Beach
Working Together to Serve

Office of the City Attorney

Memorandum

DATE: October 4, 2016

TO: Honorable Mayor Garcia and Members of the City Council

FROM: Charles Parkin, City Attorney and
Lori D. Ballance, Esq., Gatzke, Dillon & Ballance LLP

SUBJECT: City Attorney's Opinion Regarding Federal Inspection Station (FIS)

BACKGROUND

In February 2015, JetBlue Airways requested the City to apply to the federal government (U.S. Department of Homeland Security, U.S. Customs and Border Protection) to develop a Federal Inspection Station (FIS) at the Long Beach Municipal Airport (LGB). In July 2015, the City Council authorized the City Manager to proceed with a feasibility study regarding the potential development of the FIS facility. As part of the motion to approve the FIS feasibility study, the City Council also requested the City Attorney's Office to provide a legal opinion regarding "potential threats" to the Airport Noise Compatibility Ordinance if an FIS facility was built, and also to opine as to what types of mitigation could be implemented in the event that the Noise Compatibility Ordinance was invalidated.[1]

THE AIRPORT NOISE COMPATIBILITY ORDINANCE

LGB has been in existence since 1923. It serves primarily commercial air carriers (scheduled carriers having takeoff weight of 75,000 pounds or more, transporting passengers or cargo), commercial commuter carriers (scheduled carriers having takeoff weight of less than 75,000 pounds, transporting passengers or cargo), and general aviation (private aircraft and charter flights). LGB covers 1,166 acres and is surrounded by a mix of commercial, industrial, and residential land uses.

In 1981, the City adopted its first airport noise control ordinance, which limited air carrier flights to 15 per day and required air carriers to use quieter aircraft. In 1983, three commercial airlines sued the City in Federal District Court, and the District Court issued a preliminary injunction requiring the City to allow at least 18 air carrier flights per day. The City then formed a task force to conduct a study of airport operations in accordance with federal aviation regulations in anticipation of adopting legally enforceable airport noise and flight regulations.

---

[1] As it pertains to the City Attorney's opinion, the motion requested: "…[3] a risk assessment of potential threats to the airport noise control ordinance, and a plan to mitigate impacted neighborhoods and schools from environmental and health impacts should the airport noise control ordinance become invalidated" (City Council meeting July 7, 2015 - Item R-17.)

In 1986, while the Federal litigation was pending, the City certified an environmental impact report (EIR/SCH 86012911) that evaluated a second noise control ordinance that would have permitted up to 41 air carrier flights per day at LGB. However, the City Council elected to adopt an ordinance that established noise limits that restricted the number of air carrier flights to 32 per day. The Federal District Court refused to allow the second ordinance to go into effect, holding that the limitation on the number of flights was too restrictive. Pending trial, the District Court ordered the City to permit 26 air carrier flights per day. After trial, in November 1988, the Court ordered that 41 air carrier flights per day be permitted.

The City appealed the District Court rulings and while the City's appeal was pending, Congress enacted the Airport Noise and Capacity Act of 1990 (ANCA) which, in effect, significantly limited the ability of an airport proprietor (such as Long Beach) to control aircraft operations or noise related to those operations. ANCA, however, included a "grandfather" provision that permitted airport proprietors who had already adopted flight and noise restrictions (such as those adopted in Long Beach) to continue to enforce those restrictions. On November 5, 1990, when ANCA was enacted, the City was operating LGB under the 41 flight limit imposed by the District Court.

The Federal District Court's ruling striking down the City's ordinance was upheld by the Ninth Circuit Court of Appeal in January 1992, but on narrow grounds. In an effort to resolve the protracted litigation, the City and the airlines ultimately entered into a stipulated settlement agreement and a stipulated final judgment which the Federal District Court adopted on May 18, 1995. As a result of the settlement, the City enacted the current Airport Noise Compatibility Ordinance (LBMC, Chapter 16.43) (Noise Ordinance), which remains one of the most restrictive airport noise ordinances in the country. The environmental impacts of the City's current Noise Ordinance were evaluated in the 1986 Environmental Impact Report as supplemented by Negative Declaration 19-94, certified by the City Council in February 1995.

The main purpose of the 1995 settlement agreement was to provide a means (through a settlement of pending litigation between the parties) by which the normal discretion of the City Council in matters related to the Airport would be constrained by a federal judicial order for a defined period of time – through January 1, 2001. The principal legal effect of the expiration of the settlement agreement in 2001 (and the related expiration of the executory provisions of the confirming federal District Court order) was to return to the City Council its full measure of legislative and proprietary discretion as related to the possible modification to air carrier facilities, the level of permitted commercial operations at LGB, or to any other LGB related restriction which was a subject of the 1995 settlement agreement. Importantly, other than returning to the City its normal legislative and proprietary discretion to consider and implement improvement or operational projects at LGB, the expiration of the 1995 settlement agreement in 2001 did not have any legal effect on the City's long-standing policies, ordinances, and other restrictions on LGB operations, including the Noise Ordinance, which remains in full force and effect to this day. In addition, and importantly, in recent years, the FAA has acknowledged that the City's Airport noise and flight restrictions remain exempt from ANCA. *(See, e.g., letter from Mr. James W. Whitlow, Deputy Chief Counsel, FAA, to Mr. Chris Kunze, Manager of Long Beach Airport, dated April 30, 2003 (Exhibit "A"); and letter from Ms. Patricia A. McNall, Deputy Chief Counsel to Robert C. Land, Senior Vice President JetBlue Airways, dated May 27, 2015 (Exhibit "B").)*

The Airport Noise Compatibility Ordinance includes three major components:

1. It establishes Single Event Noise Exposure Levels (SENEL) for aircraft operating at LGB, thus excluding noisier classes of aircraft that would otherwise be permitted to operate.

2. It establishes a "curfew," with air carriers required to schedule all departures and arrivals between the hours of 7:00 a.m. and 10:00 p.m. Noise violations are subject to monetary administrative penalties as well as criminal enforcement.

3. It establishes a Community Noise Equivalent (CNEL) "noise budget" for air carrier and commuter flights based on their respective CNEL limits set in the baseline year of 1989-1990. The Ordinance allows air carriers to operate a minimum of 41 flights per day and commuter carriers to operate a minimum of 25 flights a day, regardless of noise impacts.

It is also important to note that the Noise Compatibility Ordinance is indifferent as to the type of carrier (such as a low-cost carrier), to a specific carrier, or to a specific type or characteristic of service (such as size of aircraft or multi-class service), and likewise does not restrict in any manner the origin or destination of flights arriving at or departing from LGB. The Ordinance does not make any distinction as between foreign or domestic flights, and does not specifically or implicitly limit flights that might depart to, or originate from, a country outside of the United States. As its name implies, the "Airport Noise Compatibility Ordinance" is primarily concerned with regulating aircraft noise by restricting the overall number of flights at the Airport and restricting the hours when such flights may be scheduled to land and take off.

At the time of this opinion, all 41 of the original "minimum" air carrier flight slots are allocated at the Airport. In December 2015, the Airport Director determined that the Airport was operating below the established noise budgets for Air Carriers at the Airport and that an additional 9 "supplemental" air carrier slots were required to be made available for allocation in order for the City to comply with the terms of the Airport Noise Compatibility Ordinance. The "supplemental" air carrier slots were allocated in the spring of 2016, making a total of 50 allocated air carrier flight slots at the Airport. At the time of this opinion, 3 of the 25 available commuter carrier flight slots are allocated.

DISCUSSION

The Noise Compatibility Ordinance has not been amended since its adoption by the City Council in 1995; nor has the Ordinance been challenged in Court since its adoption. The Ordinance continues to remain "exempt" from the relevant provisions of ANCA and maintains its "grandfathered" status. Since the adoption of ANCA, there has been no attempt or suggestion by any City Council to lessen the ordinance's current noise, flight, or "curfew" restrictions.

1. GRANDFATHERED STATUS OF THE NOISE ORDINANCE

The City's consideration of JetBlue's request for the development of an FIS customs facility at the Airport has no regulatory project component and would not modify the terms or conditions of the current regulatory framework at the Airport, including the requirements of the Noise Ordinance.

Rather, any FIS facility project would be a "bricks and mortar" project, and all of the terms and conditions of the current regulatory requirements, including the Noise Ordinance, would remain in place. In addition, the development of an FIS facility would not increase aircraft operations from the Airport's current levels, modify the current allocation procedures at the Airport, increase the number of flights beyond the parameters defined in the Noise Ordinance, or affect aircraft safety. As proposed, any FIS facility would be designed to accommodate the operation of general aviation and commercial passenger air service to international destinations at LGB under the currently permitted number of flights. Any FIS facility project would not be intended to induce future growth or future demand; however, such a facility could serve international destinations that are not currently offered at the Airport. Further, any air carrier, commuter carrier, or general aviation operator would continue to be required to abide by all existing Airport regulations, including all provisions of the Noise Ordinance.

On March 31, 2015, JetBlue requested a written legal opinion from the FAA relating to whether the initiation of service to international markets at LGB and the establishment of an FIS facility would affect the Airport's continuing compliance with its federal obligations or impact the ANCA exempt and grandfathered status of the City's Noise Ordinance (Exhibit "C"). *(See, letter from Mr. Robert C. Land, JetBlue, to Mr. Reggie Govan, Chief Counsel FAA, dated March 31, 2015 (Exhibit "C").)* As indicated previously, the FAA provided a written legal opinion that indicates the following: "[b]ecause there is no current or planned change to the City's noise ordinance, the facts presented do not justify any change in the FAA's conclusion that the City's noise ordinance is exempt from ANCA review because of the grandfathering provisions of ANCA." *(See, letter from Ms. Patricia A. McNall, Deputy Chief Counsel, FAA to Mr. Robert Land, JetBlue, dated May 27, 2015 (Exhibit "B").)* As in past correspondence with the City, the FAA did not take a position on whether the City's Noise Ordinance meets Federal requirements for airport access and reserved the right to review that issue if challenged by an air carrier in the future.

Although the existing regulatory provisions at the Airport are "grandfathered" under ANCA, any limitations placed on the origin or destination of flights at the Airport could arguably be determined by the FAA to be an amendment to the regulatory environment at the Airport that "reduces or limits aircraft operations" and, therefore, any such action or amendment would arguably *not be* exempt from ANCA and could jeopardize the grandfather status of the existing regulations. In addition, the City is required to "make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." Grant Assurance 22(a); 49 U.S.C. 47107.

In summary, and as confirmed by the FAA in its recent letter to JetBlue, the FAA does not believe that the City's consideration or approval of an FIS facility at the Airport would jeopardize the Noise Ordinance's exempt and grandfathered status under ANCA.

//

//

2. ANY MODIFICATIONS TO THE EXISTING REGULATORY ENVIRONMENT AT THE AIRPORT WOULD REQUIRE APPROVAL ACTION BY THE CITY COUNCIL, INCLUDING COMPLIANCE WITH CEQA[2]

When approving the 1995 Settlement Agreement, the City recognized that the Noise Ordinance was essential to adequately serve the existing and future air traveling public at LGB, and to strikean appropriate, responsible and desirable balance between the community's need for reasonable air transportation services, and the consequences or potential consequences of airport operations. Since that time, the City has continually regulated and enforced the cumulative noise budgets, maximum noise limits, permitted hours of operation, and maximum number of flights at the Airport.

The history of noise and access restrictions at LGB demonstrates that when the City approved the Noise Ordinance in 1995, the City clearly contemplated and intended that all restrictions at LGB would continue indefinitely. The City also understood that any modifications to the existing Noise Ordinance would require specific action by the City Council, and that any such action would be considered a "project" within the meaning of the California Environmental Quality Act, Cal. Public Resources Code 21000, et seq., (CEQA), and would require full CEQA compliance before any final City approval or implementation.[3] In fact, and importantly, the Noise Ordinance was a definitional component of the "project description" contained in the 1986 EIR (SCH 860-12911), as supplemented by Negative Declaration 19-94, approved in February 1995, and is a self-mitigating measure for the approved level of operations at LGB.

Because specific portions of the Noise Ordinance include mitigation commitments to address the noise and related environmental impacts of continued operations at the Airport; to the extent the identified noise and related environmental impacts remain, the requirement to minimize, reduce or avoid the impacts under CEQA remain as well. *See, e.g.,* Cal. Public Resources Code 21002.1(b) (requirement to mitigate includes reducing impacts during the life of the action); *Stone v. Bd. Of Sups.* (1988) 205 Cal.App.3d 927, 935 (agency's modification of condition of approval reasonable only if it imposes no new or adverse environmental impacts). In fact, if there is a discretionary change in the Noise Ordinance by the City Council, such as the modification or elimination of controls on the number of flight operations at the Airport, which results in either new significant environmental effects or a substantial increase in the severity of previously identified environmental effects, CEQA requires the City to analyze those impacts before adopting or approving any such modifications or revisions to the Noise Control Ordinance. CEQA Guidelines 15162(a)(1).

---

2 When the electorate proposes and later votes to adopt an initiative measure, CEQA is inapplicable. 14 Cal.Code Regs. 15378(b)(3). In this circumstance, there is no "project" because the governing body is not taking any action (the voters are). CEQA also does not apply when Council receives a voter initiative petition that qualifies under the Elections Code and the Council chooses to adopt the initiative without putting the decision to the voters. This exemption, however, may not extend to subsequent discretionary permits that may be required. *See, e.g., Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029.

3 *See* fn. 2, infra. Generally, CEQA is inapplicable to voter initiative petitions and voter adopted initiative measures.

Therefore, even if there was a successful challenge to the Noise Ordinance (or if the City or future City Council decided to consider amendments to the Ordinance), the City would, with certain limited exceptions, be required to maintain the existing conditions and other regulatory restrictions at the Airport pending full CEQA (and perhaps also National Environmental Policy Act (NEPA)) compliance.

3. IF THE NOISE ORDINANCE WAS INVALIDATED, THE CITY COULD REINITIATE A SOUND ATTENUATION PROGRAM TO MITIGATE POTENTIAL INCREASES IN NOISE LEVELS

Although Congress has made no attempt to alter the exempt status of the City's Ordinance, a Congressional modification or change to ANCA, or a Federal Court determination (which we believe to be unlikely) could potentially remove or modify some or part of the current regulatory restrictions governing operations at LGB. It should be noted that the above possibilities could occur whether or not an FIS facility is constructed.

Any argument that consideration of an FIS facility at LGB could result in the City losing regulatory authority, however, is speculating about some possible future loss of regulatory authority and cannot reasonably be linked or shown to be a possible effect in the context of the FIS facility consideration process.

We consider the threat of litigation and the potential invalidation of the Noise Ordinance because of the consideration or approval of an FIS facility at the Airport to be no greater than currently exists if an FIS facility was not located at the Airport. As has been frequently stated, there is no action that the City can reasonably take to prevent an air carrier or other interested party from filing a complaint in court or with the FAA at any time in an attempt to invalidate the Noise Ordinance. However, unlike the litigation that occurred in the late 1980's and early 1990's, the City now has an acknowledgement from the FAA that its exemption from ANCA continues to exist, and the City likewise would be able to rely on a Federal Court recognized settlement agreement and CEQA clearance directly relating to the enactment of the Noise Ordinance if the Ordinance is ever challenged in court or with the FAA.

Some have postulated that by approving a FIS facility, economic competition by air carriers or other users of a customs facility could lead to litigation if all competing air carrier or general aviation interests could not be accommodated at such a facility. However, there are no facts to support this scenario, and it is just as likely that other economic factors, currently existing in the air carrier or general aviation industry could spawn litigation whether or not a customs facility is built and operated at LGB. That said, if there is a successful challenge to the Noise Ordinance, the City could re-institute a sound attenuation program to install sound insulation in homes and other noise sensitive uses located in high noise impact areas. Under this type of program, the Airport would typically provide examples and demonstrations of replacement doors and windows, ventilation systems and other sound insulating construction. The City would then contract with the property owner to install the insulation in return for an avigation easement. The cost of these programs is often funded from the proceeds of the passenger facility charges (PFCs) upon approval of the FAA. Additional funding sources could include AIP Grant funds, LGB revenues and financing (LGB Bonds), or funds from the City's general fund.

The FAA and the California Department of Transportation, Division of Aeronautics, have both adopted noise standards for residential land uses, schools, and other noise sensitive uses. These standards generally establish a maximum exterior noise level of 65 dB CNEL for private outdoor living areas and an interior noise level of 45 dB CNEL. To the extent any changes in the regulatory environment at the Airport result in residential communities, schools or other sensitive uses being exposed to noise levels outside these standards, the City could seek PFC approval and federal grants for noise attenuation programs to help ensure compliance with these important federal and state noise standards.

CONCLUSION

It is our opinion that the City's consideration of FIS facility improvements would not jeopardize the exempt and grandfathered ANCA status of the Noise Ordinance. However, if the Noise Ordinance is invalidated at some time in the future, the essential terms and existing regulatory conditions at the Airport would continue. Any relaxation of the current restrictions would, with certain limited exceptions, require action by the City, including full compliance with CEQA, and any planning or policy decisions by the City in the future would be required to take into account the unique history and unique operational characteristics at the Airport, as well as the residential and other sensitive land uses that are affected by Airport operations.

JCP:MJM:kjm
A16-02198
l:\apps\ctylaw32\wpdocs\d002\p026\00664297.docx

Attachments: Exhibits "A," "B" and "C"

U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 30 2003

Mr. Chris Kunze
Manager, Long Beach Airport
4100 Donald Douglas Drive
Long Beach, CA 90808

RE: Final Settlement Agreement Between the City of Long Beach and American Airlines, Inc., JetBlue Airways Corp., and Alaska Airlines, Inc.

Dear Mr. Kunze:

In February 2003, the City of Long Beach (City) submitted a final settlement agreement entered into on February 5, 2003 ("agreement" or "settlement agreement"), between the City, American Airlines, JetBlue Airways, and Alaska Airlines (the parties) relating to the allocation of operating slots at Long Beach Airport. The agreement resolves a dispute among the parties relating to the allocation of a limited number of regular and supplemental slots at the airport. The nature of the dispute and the process leading to the agreement resolving the dispute are set forth in the recitals to the agreement. As noted in section 1.9 of the agreement, the Federal Aviation Administration (FAA) offered its services in the mediation of a settlement, and FAA representatives participated in meetings of the parties during negotiation.

The City has accepted grants under the Airport Improvement Program (AIP), 49 U.S.C. § 47101 *et seq.*, and is obligated by the assurances in its grant agreements with the FAA. Obligations under the grant assurances include the obligation to provide access by air carriers on reasonable and not unjustly discriminatory terms. Airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990, are subject to the provisions of the Airport Noise and Capacity Act of 1990 (ANCA), 49 U.S.C. § 47521, *et seq.*, and its implementing regulations at 14 C.F.R. Part 161.

The parties have asked the FAA for an opinion on the consistency of the proposed agreement with Federal law and policy on airport access. Section 4.2 of the settlement agreement conditions implementation of the agreement on FAA concluding that the agreement is consistent with applicable Federal law. We will first address the

EXHIBIT "A"

applicability of ANCA to the settlement agreement, and then discuss the consistency of the agreement with the City's AIP grant assurances.

The Airport Noise and Capacity Act (ANCA)

On November 5, 1990, the Congress enacted ANCA to establish a national program for review of airport noise and access restrictions. ANCA, as implemented by 14 C.F.R. Part 161, requires airport proprietors that propose to implement airport noise or access restrictions that affect the operation of Stage 2 aircraft to comply with specific notice, economic cost benefit analysis, and comment requirements. ANCA further requires that airport proprietors proposing to implement noise or access restrictions on Stage 3 aircraft operations provide a detailed economic cost benefit analysis, demonstrate satisfaction of six statutory criteria, and obtain FAA approval prior to implementation of any such restrictions, unless agreement is obtained from all affected aircraft operators.

When ANCA was passed, it permitted airports to implement Stage 2 restrictions that were proposed and Stage 3 restrictions that were in effect before its effective date. ANCA also expressly gave a statutory exception to certain noise restrictions already in existence. These exceptions are collectively called the "grandfathering" provisions of ANCA. Three of the "specific exemptions" are relevant here and specifically provide that ANCA's requirements do not apply to:

- a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety. 49 U.S.C. 47524(d)(4).

- an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect. 49 U.S.C. 47524(d)(5)(A).

- a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990. 49 U.S.C. 47524(d)(5)(B).

The FAA included similar exemption language in its implementing regulations at 14 C.F.R. Part 161.7(b), which states that:

> The notice, review, and approval requirements set forth in this part do not apply to airports with restrictions as specified in 49 U.S.C. App. 2153(a)(2)(C):
>
> > (4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (b)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

As discussed below under the grant assurance section, the basic document governing access at the Long Beach Airport is Chapter 16.43 of the City's municipal code. The settlement agreement represents a subsequent amendment to Chapter 16.43. Therefore, before discussing the effect of ANCA on the proposed settlement agreement, it is necessary to briefly review the status of Chapter 16.43 with respect to ANCA.

Chapter 16.43 and ANCA:

In 1981, Long Beach adopted its first noise control ordinance, which limited air carrier flights to 15 per day and required carriers to use quieter aircraft. Shortly thereafter, years of litigation ensued over access to the Long Beach Airport. In December 1983, a Federal district court ruled that there was an insufficient basis to support the 15-flight restriction and entered a preliminary injunction prohibiting the city from reducing the number of daily carrier flights below 18.

Following entry of the preliminary injunction, the City undertook a 14 C.F.R. Part 150 study of the noise situation at the airport. The City submitted its final noise compatibility program and implementing ordinance to the FAA for review in July of 1986. In the meantime, prior to completion of the Part 150 program, and in part spurred by numerous noise-related nuisance and inverse condemnation claims filed by residents affected by airport operations, the City adopted an ordinance limiting the number of air carrier jet flights to 32. Additional litigation followed, and in 1989, the court invalidated the 1986 ordinance and ordered an increase in the minimum number of allowable flights from 26 to 41.

While the City's appeal to the Ninth Circuit was pending, on November 5, 1990, Congress enacted ANCA. Thereafter, on October 24, 1991, the Ninth Circuit Court of Appeals affirmed the district court's injunction and finding of unlawfulness of the City's 1986 noise ordinance. On January 9, 1992, the Ninth Circuit denied a petition for rehearing and rehearing en banc.

On November 5, 1990, when ANCA was enacted, the City was operating Long Beach Airport under the 41 flight limit imposed by the district court.

Beginning in 1992, in an effort to avoid further litigation, the parties negotiated a

Stipulated Final Judgment which the Federal district court adopted on May 18, 1995. Among other things, the stipulation provided that (1) the City could enforce its newly-adopted airport noise regulations (Chapter 16.43); (2) until at least January 1, 2001, the City could not amend its noise regulations to make them more restrictive with respect to aircraft noise or air carrier operations; and (3) on or after January 1, 2001, the City was free to "amend or replace ... its ordinances ... including the adoption of regulations more restrictive of airport noise and operations than those embodied in the version of Chapter 16.43 ...." The ordinance approved by the court remains in effect today and incorporated a provision that "Air Carriers shall be permitted to operate not less than forty-one flights per day, the number of flights authorized on November 5, 1990."

ANCA applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airports imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990. 14 C.F.R. 161.3(a). Although Chapter 16.43 imposes restrictions on Stage 2 and Stage 3 aircraft and was proposed and became effective after October 1, 1990, Chapter 16.43 is exempted from application of ANCA in accordance with 49 U.S.C. 47524(d)(5)(A) and (B), 14 C.F.R. 161.7(b)(5) and (6). As stated, at the time ANCA was enacted, the City was operating the Airport under the 41 flight limit imposed by the district court, and the City's 1986 noise ordinance had been invalidated by a court but this decision was under appeal. Under our interpretation, the City's 1986 ordinance represents "a restriction described in paragraph (b)(5) of this section [*i.e.*, 49 U.S.C. 47524(d)(5)(A), 14 C.F.R. 161.7(b)(5)] [that] is either partially or totally disallowed by a court." In addition, Chapter 16.43 represents a "new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990." 49 U.S.C. 47524(d)(5)(B), 14 C.F.R. 161.7(b)(6). As noted, Chapter 16.43 was approved by the Federal district court in 1995 (to replace the invalidated ordinance) and includes the necessary requirement that the regulation would not prohibit aircraft operations in effect on November 5, 1990. Thus, by operation of 49 U.S.C. 47524(d)(5)(B) and 14 C.F.R. 161.7(b)(6), Chapter 16.43 is exempted and the notice, review, and approval requirements set forth in ANCA and Part 161 do not apply.

The Proposed Settlement Agreement and ANCA:

Under 49 U.S.C. § 47524(d)(4), as implemented by 14 C.F.R. §§ 161.3(b) and 161.7(b)(4), ANCA does not apply to "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety." By operation of 49 U.S.C. 47524(d)(5)(A) and (B), and 14 C.F.R. 161.7(b)(5) and (6), for purposes of interpreting 49 U.S.C. 47524(d)(4) and 14 C.F.R. 161.7(b)(4), we consider Chapter 16.43 to be an "aircraft noise or access agreement or restriction in effect on November 5, 1990" within the meaning of 49 U.S.C. 47524(d)(4) and 14 C.F.R. 161.7(b)(4). The statutory provisions, 49 U.S.C. 47524(d)(5)(A) and (B), contemplate that an airport having a noise ordinance disallowed by a court may under certain conditions replace that ordinance with a new restriction that would be exempted from ANCA.

We conclude that the settlement agreement represents a "subsequent amendment" to Chapter 16.43 "that does not reduce or limit aircraft operations or affect aircraft safety" under 49 U.S.C. 47524(d)(4). As a result, neither ANCA nor Part 161 apply to the agreement. The agreement amends Chapter 16.43 because, among other things, it alters the way in which supplemental slots are allocated under Chapter 16.43 as discussed below in connection with the City's grant agreements. Rather than reducing or limiting air carrier operations at Long Beach Airport, the agreement permits an increase in the number of such operations as an alternative to almost certain litigation which could restrict access for years. In fact, both the noise ordinance and the agreement contemplate an increase in air carrier operations (through supplemental slots) assuming the City's noise budget would so permit. The agreement acknowledges in section 1.4 that Chapter 16.43 provides for a "minimum of forty-one (41) daily departures," and neither reduces nor limits aircraft operations. Nor does the agreement affect aircraft safety.

Resolution No. C-27843's Use Or Lose Provision:

As discussed below, City Resolution C-27843 extended the time air carriers may hold newly awarded slots before initiating service from six months to 24 months. The City is advised that such an extension of the use-or-lose period on its face could clearly impede new entry or increases in air carrier operations, and could be interpreted as a noise or access restriction within the meaning of ANCA and Part 161. However, as noted below, we consider the foreclosure issue to be moot at this time.

Airport Improvement Program Grant Assurances. Our review of the City's compliance with its grant assurances is limited to the settlement agreement, as requested; it does not extend to the basic document governing access at the airport, Chapter 16.43. We take Chapter 16.43 as a given, and we review the agreement only as a settlement of issues arising under implementation of Chapter 16.43 to resolve a dispute that would otherwise have almost certainly resulted in litigation. However, because the agreement is based on Chapter 16.43 and several actions taken under that ordinance in the past two years, we consider it necessary to address certain issues arising under Chapter 16.43 before addressing the agreement itself in order to clarify the limited extent of the opinions expressed in this letter.

Chapter 16.43. The parties have not requested the FAA to address the consistency of Chapter 16.43 with the grant assurances, and it is unnecessary at this time for the FAA to take a position on whether Chapter 16.43 meets Federal requirements for airport access. At some point in the future, however, the FAA may be presented with a complaint from a third party under 14 C.F.R. Part 16, or may have reason to review Chapter 16.43 from a compliance standpoint on its own initiative. The FAA thus reserves the right to review the consistency of Chapter 16.43 with Federal law in the future. That review would not be affected by the opinions in this letter related to the settlement agreement at issue. In other words, the FAA would not revisit the settlement terms, but the current finding that the settlement is a reasonable action under existing Chapter 16.43 would not prevent an analysis of whether the provisions of Chapter 16.43 themselves meet Federal access requirements, if that issue were to be raised.

For example, Chapter 16.43 provides that a minimum of 41 regular air carrier slots will be allocated to air carriers, and that additional slots will be allocated on a one-year basis as supplemental slots only. We understand that a noise ordinance based on the noise budget concept requires some flexibility to adjust the number of slots upward or downward from time to time, to ensure that operations remain within the established noise budget. At the same time, the supplemental slots allocated on a relatively short-term, temporary basis may well be far less useful and less valuable to carriers than regular slots. The City believes that the supplemental slots are not an avenue for new entry at the airport, because the risk of investing in a new operation at the airport using only temporary slots would probably be considered too high. The existing "defacto" limit of 41 regular slots (described as a "minimum" rather than a limit in Chapter 16.43) has largely been the driver of the dispute over slot allocation that led to the recent negotiations and settlement agreement. While the limit of 41 regular slots is accepted as a given for the purposes of the FAA's consideration of the agreement, the FAA may separately consider the continuing basis for that limit after we have had the opportunity to review the City's analysis of the effect of current operations on the noise budget targets.

The FAA will continue to offer its services to the City at any time to identify potential compliance issues and means by which they can be avoided.

The allocation of 27 slots to JetBlue. In May 2001, the City allocated all 27 of the then-remaining regular slots at the airport to JetBlue in a single allocation. That allocation was made in accordance with Chapter 16.43, which provides for allocation of available regular slots to a requesting carrier on a first-come, first-served basis. It is questionable whether the allocation of all remaining slots to a single carrier was consistent with the City's obligations to provide reasonable access to the airport in the future, particularly given the simultaneous action to permit JetBlue 24 months before it had to use the slots, as discussed below. However, the FAA has not issued an opinion on whether the allocation to JetBlue was consistent with the City's Federal obligations, because competing slot requests by other carriers were accommodated through settlement discussions that resulted in the settlement agreement. That agreement resolves all competing claims for all existing regular slots at the airport, and we consider the issue of the May 2001 allocation moot under the circumstances. Therefore, the FAA will not take any further action on the allocation.

Amendment of the time to begin use of slots. In May 2001, at essentially the same time it allocated 27 slots to JetBlue, the City amended its flight allocation procedures in accordance with Chapter 16.43 through Resolution No. C-27843. That Resolution extended the time carriers may hold newly awarded slots before initiating service (the use-or-lose period) from six months to 24 months. The combined effect of this change *and* the allocation to JetBlue of all remaining regular slots at the airport, without consideration of other factors, would appear to have potentially foreclosed new entry or any increase in an incumbent/competitor's operations. The FAA has informally advised the City that we do not find any proper justification for this change in the use-or-lose period, and, therefore, that this action would very likely be considered an unreasonable restriction on access to the airport in violation of Federal law and policy.

However, as with the allocation itself, the change in the use-or-lose period brought complaints by other carriers, which in turn resulted in a settlement that accommodated slot requests of all interested carriers. It is also very important that the period in which JetBlue enjoyed relief from having to begin operations ends shortly -- on June 1, 2003 -- at which time JetBlue will be required to operate all of its allocated slots or return them to the City. We expect that the City will rescind or revise as necessary section 5(B) of Resolution No. C-27843 (and Chapter 16.43 if necessary) to limit the use-or-lose period to a shorter period (such as the six month period previously in place or less than six months), and avoid any future compliance issue with this aspect of the Resolution or the Long Beach Municipal Code. Assuming that takes place, under these circumstances, the FAA will not take any further action on this issue.

The February 5 settlement agreement. Two provisions in the settlement agreement directly affect the allocation of operating rights at the airport: Section 2 relates to "regular" or non-expiring departure slots at the airport; Section 3 relates to supplemental departures allocated in years when the noise budget permits.

Section 2 of the agreement describes the allocation of the 41 regular departure slots at the airport. This section represents an agreement among all three of the air carriers that had requested regular slots at the airport as of the date of the agreement (and to this date). Section 2 does not alter the provisions of Chapter 16.43 for allocation of regular slots, which is essentially in accordance with a first-come, first-served procedure. Because of the aforementioned change by the City in the use-or-lose period, the parties did not agree on the City's allocation of all 27 available slots at the airport to one carrier. Section 2 resolves that disagreement, among all interested parties.

Because requests for regular slots by the interested parties, when added to the 14 existing operations at the airport, exceeded a total of 41, there is no outcome that would not have resulted in the allocation and operation of all 41 regular slots provided in Chapter 16.43. Accordingly, the agreement does not have any effect on the availability of regular slots to carriers other than the parties to the settlement now or in the future; that future availability will be determined by Chapter 16.43 and the City's noise budget contained therein.

Section 3 of the agreement provides for the allocation of the first seven supplemental departures for the years 2003 through 2008. If the City determines that more than seven supplemental slots can be allocated in any year under Chapter 16.43, the eighth and subsequent slots would be allocated to any requesting carrier in accordance with Chapter 16.43. After 2008, the agreement expires, and all supplemental slots will be allocated in accordance with Chapter 16.43, which calls for a lottery to distribute slots when demand exceeds supply.

In support of the reasonableness of the supplemental slot allocations under the agreement, the City argues that the agreement resolves the competing interests of all carriers that have expressed an interest in operating at the airport. For many years the City has

marketed the airport, but has been unable to interest new carriers in beginning service. As a result, until the recent allocation to JetBlue and subsequent requests by American and Alaska, no more than 14 of the airport's 41 regular slots were used for more than a decade.

The City also notes that the recent dispute over slot allocation, and resulting settlement discussions, were reported in the aviation press and would have been well known to any carrier interested in participating in those discussions. No carrier has approached the City requesting slots since the allocation to JetBlue in May 2001, other than the parties to the agreement.

The City further argues that the procedure for allocation of supplemental slots has no real effect on new entry, because supplemental slots are not suitable for initiation of service at the airport. Under Chapter 16.43, supplemental slots expire and are reissued each year. The number of supplemental slots is determined by whether the total air carrier activity at the airport is within the noise "budget" for air carriers under Chapter 16.43 during the previous year; the number can be increased, or be decreased down to zero. Thus, there is no guarantee of the renewal of a supplemental slot. The City argues that it is unlikely that a carrier would make the investment to initiate service at an airport using slots that are not guaranteed to last beyond one year.

In response to a recent informal notice to carriers of the City's request for FAA review of the settlement agreement, United Airlines objected to both any substantial extension of the use-or-lose period and to any agreement on supplemental slots that "effectively freezes out" new entry at the airport through 2008.

The FAA's view. As already indicated, the FAA believes that the extension of the use-or-lose period from six months to 24 months would likely be unreasonable under the grant assurances and that we expect the City to rescind it. At this point, all regular slots available at the airport will be in use by next month; we therefore intend to take no action on this aspect of the agreement. The FAA does not believe that the agreement on supplemental slots unreasonably limits new entry at the airport, given the immediate benefits of the temporary settlement agreement and the lack of any actual effect on new entry at this time, for the reasons discussed below. Therefore, we consider that the this portion of the agreement does not violate the City's AIP grant assurance obligations. Finally, it should again be stressed that we express no opinion on whether the number of regular slots under current Chapter 16.43, or the provision for limiting newly available capacity to one-year supplemental slots, provides reasonable access under the grant assurance requirements.

In our view, the settlement agreement has the significant benefit of providing immediate access to each of the three carriers actually interested in adding service at the airport. This includes 23 departures a day by JetBlue (reduced to 22 when one slot is recalled by Alaska), all added in the past two years. Implementation of the agreement avoids the delays and risks associated with litigation, and provides all three interested carriers with

the ability to begin desired new service immediately. This new service significantly expands competition and air service for users of Long Beach Airport.

The only potential adverse effect of the agreement on new entry arises from the following scenario: (1) sometime between the present and the end of 2008, a carrier that has not previously expressed an interest in serving Long Beach would develop such an interest; (2) that carrier would be willing to open a station and begin service at the airport using slots that expire each year with no guarantee of renewal, and (3) no more than seven supplemental slots are available at that time. (The number of supplemental slots likely to be made available under Chapter 16.43 is unknown at this time. If more than seven supplemental slots are available, they would be allocated under Chapter 16.43 and the carrier would have a fair chance of receiving them.)

While the requesting carrier in the scenario would never have been guaranteed supplemental slots at the airport, with or without the agreement, clearly the opportunity to obtain a supplemental slot is somewhat reduced by the agreement for the next several years. The question is whether this effect is sufficient to reject the agreed allocation of slots among all of the carriers currently interested in serving the airport. We do not believe it is in the circumstances of this case.

As a matter of general principle, the FAA would consider it unjustly discriminatory and the grant of an exclusive right for an airport to allocate slots now that may only become available in the future. Long Beach presents a special case for the following reasons:

- The allocation accommodates the interests of all interested carriers competing for access to the airport at this time.
- There is no evidence of interest in slots by any other carriers at this time.
- As indicated above, the FAA expects the extension of the use-or-lose period to be rescinded, and it does not now act to prevent new entry by any air carrier.
- Even if some other carrier were to develop an interest in the future, it is perhaps less likely to be able to initiate service at the airport using supplemental slots that expire each year. If the supplemental slots were acceptable to such a carrier, there is no guarantee they would be available even without the agreement in effect.
- The allocation does not apply to all potentially available supplemental slots, and some number of supplemental slots may be available even under the agreement, depending on the number of supplemental slots made available each year under Chapter 16.43.
- The measure is temporary and expires after 2008.

If at some point in the future a potential new entrant carrier believes that it is Chapter 16.43 itself that is the barrier to entry, that carrier is free to challenge Chapter 16.43 by bringing a complaint to the FAA under 14 C.F.R. Part 16. In that case, the City could defend the reasonableness of Chapter 16.43, make modifications thereto, or consider other courses of action.

As a result, the actual effect of the settlement agreement on future new entry at the airport is speculative and limited in time and scope. By contrast, the agreement permits the immediate introduction and continuation of a significantly expanded schedule and new competitive air service at the Long Beach Airport. It also avoids possible litigation and its uncertain results.

Accordingly, the FAA will not act to prevent the implementation of the agreement, as it does not currently present an issue of noncompliance under ANCA or the City's grant assurances.

This opinion is based on the particular circumstances at Long Beach Airport, including the fact that the agreement represents the settlement of potential litigation issues arising under the City's ordinance, which is grandfathered under ANCA. The findings and opinions in this letter should not be taken as general policy on airport access that would apply to any other airport access rules or proposed rules, even if similar to the ordinance in effect at Long Beach.

The FAA looks forward to continue working with the City of Long Beach. I appreciate the considerable time and effort that representatives of the City have spent in meeting with representatives of the FAA and responding to our questions.

Sincerely,

Nancy D. LoBue

for James W. Whitlow
Deputy Chief Counsel

COPY

U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

MAY 27 2015

Robert C. Land
Senior Vice President Government Affairs and
Associate General Counsel
JetBlue Airways
27-01 Queens Plaza North
Long Island City, NY 11101

RE: Request for FAA Legal Opinion – Initiation of International Service at Long Beach Airport and Continuing Compliance with Grant Assurances

Dear Mr. Land:

Thank you for your letter of March 31, 2015, requesting a legal opinion on whether the planned initiation of international service by JetBlue Airways (JetBlue) from Long Beach Airport (LGB) would affect the airport sponsor's continued compliance with its grant assurances.

Currently JetBlue, US Airways, and Delta Airlines serve LGB in domestic U.S. markets.[1] The City of Long Beach, the airport sponsor, has a "noise budget" ordinance to mitigate aircraft noise impact on surrounding residential communities.[2] In a letter dated April 30, 2003, the FAA concluded that the Airport Noise and Capacity Act (ANCA) and 14 C.F.R. part 161 requirements did not apply to this ordinance because the ordinance was grandfathered under 49 U.S.C. 47524(d)(5)(A) and 47524(d)(5)(B). That same FAA letter also concluded that a settlement agreement allocating slots under the ordinance did not present an issue of current noncompliance under ANCA or the City's grant assurances. Consistent with that letter and settlement agreement, the Long Beach City Council adopted Resolution C-28465 on October 12, 2004, to revise the City's flight allocation rules. You state that there has been no change to LGB flight allocation rules since that time.

JetBlue is interested in beginning service from LGB to international markets, in Mexico and Central America without U.S. pre-clearance facilities, and has taken the first steps to have the City request availability of Federal inspection services at the airport. You contend that the planned service would be compliant with the noise ordinance and operated within JetBlue's existing allocation under that ordinance.

---

[1] For the year ending September 30, 2014, there were 27,233 air carrier operations at LGB. FAA Form 5010, Airport Master Record.

[2] Long Beach Municipal Code, Title 16, Chapter 16.43. The City mitigates noise at LGB by establishing a single event noise limit (SENEL), by imposing a noise curfew, and by limiting aircraft operations by category of operator (air carriers, commuter carriers, industrial operators, charter operators, and general aviation). The City established operational limits for each category intended to achieve a noise budget based on cumulative noise impacts from operations in base year 1989.

EXHIBIT "B"

There is no planned change to the ordinance to make it more restrictive, and the only potential change is the addition of a customs facility at LGB to process international arrivals. You indicate that JetBlue would substitute international flights for domestic flights, with no other changes in operations, and would use aircraft of the same type currently operating at LGB. You contend the proposed international service would have no effect on LGB's grant assurance compliance or on the applicability of ANCA to the ordinance. You also state that any carrier serving the airport could operate international flights using the customs facility, provided the flights are within the current operational limits. Nevertheless, you state there has been some concern from the Long Beach community that international service would undermine the City's existing ordinance or otherwise cause the FAA to reconsider its longstanding acceptance of that ordinance.

You request assurance from the FAA that the initiation of international service at LGB:

(1) Will not affect the conclusion in the FAA letter of April 30, 2003, that the Long Beach ordinance is exempt from ANCA review;
(2) Will not affect the conclusion in that letter that the allocation of flights at LGB does not present a current issue of noncompliance under the sponsor's grant assurances; and
(3) Will be consistent with the City's obligation to provide reasonable, not unjustly discriminatory, access to air carriers.

No facts have been presented to indicate the City has or plans to amend its noise ordinance. Additionally, no facts have been presented to suggest that allocations or operations under the City's ordinance are changing, with the exception of a potential change to the origin or destination of some existing LGB operations.

Because there is no current or planned change to the City's noise ordinance, the facts presented do not justify any change in the FAA's conclusion that the City's noise ordinance is exempt from ANCA review because of the grandfathering provisions in ANCA.

The 2003 letter did not take a position on whether the City's noise ordinance met Federal requirements for airport access. As stated in the 2003 letter, if at some point in the future a potential new entrant carrier believes that the ordinance is a barrier to entry, that carrier would be free to challenge it by filing a complaint with the FAA under 14 C.F.R. part 16. In such a case, the City could defend the reasonableness of its ordinance, make modifications to the ordinance to facilitate market entry, or consider other courses of action. The FAA reserves the right to review such a complaint and the consistency of the noise ordinance with Federal law.

However, as in 2003, the FAA is aware of no interest in LGB operations (either domestic or international) by other carriers. JetBlue's proposal to use currently allocated slots for international service with the same aircraft type permitted under the noise ordinance does not raise an issue of airport access requiring the FAA to opine on the ordinance's consistency with Federal grant assurances. Accordingly, the FAA does not find an issue of current noncompliance under ANCA or the City's grant assurances. Concerns that the introduction of international service consistent with the current noise ordinance would undermine that ordinance or cause a change in the FAA's position toward it are unwarranted.

This opinion is based on the information you have provided and is limited to the particular circumstances at LGB, including the ordinance that was grandfathered under ANCA. This opinion is not binding on the FAA and does not constitute a final agency order.

I hope this response is helpful to you. If you have additional questions regarding this matter, please do not hesitate to contact me or Daphne Fuller, the Assistant Chief Counsel for Airports and Environmental Law, at (202) 267-3222.

Sincerely,

Patricia A. McNall
Deputy Chief Counsel

jetBlue

March 31, 2015

Reggie Govan, Esq.
Chief Counsel, AGC-1
Federal Aviation Administration
800 Independence Avenue, SW.
Washington, DC 20591

Dear Mr. Govan:

I am writing to request an opinion of the Federal Aviation Administration that initiation of service to international markets from Long Beach Municipal Airport ("LGB" or "Airport"), and the establishment of Federal inspection facilities necessary for such service, will not affect the airport sponsor's continuing compliance with its Federal obligations.

The City of Long Beach (City) is the owner and sponsor of the Airport. JetBlue Airways and other carriers currently serve the Airport in domestic U.S. markets, but not international service. JetBlue is very interested in beginning service in international markets from Long Beach, and has taken the first steps to have the City request availability of Federal inspection services at the Airport. The service planned by JetBlue would be fully compliant with the City's airport noise ordinance and within JetBlue's existing flight allocation under that ordinance.

It seems apparent to us that simply substituting international flights for domestic flights at the Airport, with no other changes in operations, would have no effect on the airport sponsor's grant compliance or the applicability of the Airport Noise and Capacity Act to the City ordinance. However, there has been some concern from the Long Beach community that international service would in some way undermine the City's existing airport noise ordinance, or cause the FAA to reconsider its longstanding acceptance of that ordinance. Accordingly, this letter is a request that your office provide some basic assurances about the agency's view of the proposed new service at LGB, as outlined more fully below.

Background. The Airport is currently served by JetBlue, US Airways, and Delta. The FAA Form 5010 Airport Master Record for the Airport shows operations for the year ending September 2014 as 304,720, of which 27,233 were air carrier operations.

The City has adopted a unique "noise budget" ordinance to mitigate aircraft noise impact on surrounding residential communities. Title 16, Chapter 16.43 of the Long Beach Municipal Code, *Airport Noise Compatibility*, mitigates noise from the Airport by establishing a single-event noise limit (SEL), by imposing a noise curfew, and by limiting the number of operations in each of five categories: Air Carriers, Commuter Carriers, Industrial operators, Charter operators, and General Aviation (which includes all other users). Public aircraft, military aircraft, and certain emergency and flight test operations are exempted. The limits on the number of operations are intended to limit the noise contribution by each category to a total noise "budget," based on cumulative noise impacts from operations in the base year 1989.

The Airport Noise and Capacity Act of 1990 (ANCA) included a "grandfather" section providing for certain localized exceptions to the act's general limits on airport noise restrictions. At the time ANCA was enacted, the City's appeal of a 1988 U.S. district court decision to the Ninth

27-01 Queens Plaza North| Long Island City, NY 11101 | 718.286.7900

EXHIBIT "C"

Circuit was pending. As a result, two of the grandfather exceptions apply to the Long Beach ordinance:

- 49 U.S.C. 47524(d)(5)(A): an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

- 49 U.S.C. 47524(d)(5)(B): a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990;

Allocation of the limited number of flights permitted by the noise budget is governed by the same ordinance. In response to a disagreement over the allocation of air carrier slots in 2003, the FAA mediated a settlement agreement among the carriers serving the Airport at that time. The City submitted the settlement agreement to FAA for review, and the Office of the Chief Counsel responded in a letter dated April 30, 2003. A copy of that letter is enclosed.

The FAA letter confirmed that the agency considered the current ordinance exempt from ANCA review. Presumably that would change only if the City adopted amendments to the noise ordinance that were more restrictive than the current ordinance. There is currently no proposal for a more restrictive ordinance, only a request to add a Customs facility at the Airport to process international arrivals.

The FAA also considered whether the allocation of flights under the settlement agreement met the City's obligations for reasonable, not unjustly discriminatory access to the airport. The letter stated that the agency would not act to prevent implementation of the agreement because "it does not currently present an issue of noncompliance with ANCA or the City's grant assurances." In response to guidance in the FAA letter, the City Council adopted Resolution C-28465 on October 12, 2004, to revise the City's flight allocation rules. Since that time there has been no change to airport flight allocation rules, and no further suggestion from the FAA that there are any compliance issues with the noise ordinance or the City's implementation of the governing ordinance.

Prospective international service at the Airport. JetBlue currently provides service to a number of U.S. destinations, but cannot operate to points outside the United States from LGB until Federal inspection services are available. Destinations under consideration by JetBlue for future international service to Mexico and Central America do not have U.S. pre-clearance facilities; therefore, facilities and staff for Federal inspections will be required at LGB before JetBlue could begin international service. .

When JetBlue does begin service to international destinations from Long Beach, that service will not require additional flight slots beyond JetBlue's current allocation, pursuant to rules governing the allocation of slots under the ordinance. The international flights will use aircraft already in JetBlue's fleet, of the same aircraft type now operating at the Airport in domestic service. As a result, the new service will not affect the allocation of flights to any other carrier, will not change the number of flights currently permitted under the noise ordinance, and will be

entirely within the limits of the same Long Beach noise ordinance that was subject to a thorough review by your office in 2003.

The establishment of Federal inspection services at the Airport will enable any carrier serving the Airport to operate international flights, not just JetBlue. However, the availability of Federal inspection services will not enable a carrier to add flights or to use aircraft types not already permitted by the City noise ordinance.

Request for opinion. Given that initiation of international service at Long Beach will not increase the number of airline flights now permitted at the Airport, will not change the flight allocation procedures, and will not cause a change in the types of aircraft now permitted under the ordinance, we request assurance from the FAA that the initiation of international service at the Airport:

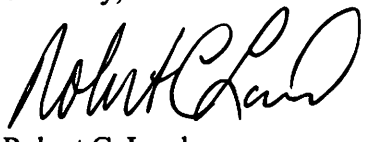
1. Will not affect the conclusion in the FAA letter of April 30, 2003, that the Long Beach noise ordinance is exempt from ANCA review;
2. Will not affect the conclusion in that letter that the allocation of flights at the Airport does not present a current issue of noncompliance under the City's AIP grant assurances; and
3. Will not be inconsistent with the City's obligation to provide reasonable, not unjustly discriminatory access to air carriers.

I understand that the same general reservations and conditions in the 2003 letter would continue to apply to any opinion from your office on grant compliance. Our request is only for confirmation of the above points if there is no change to the use of the airport other than the operation of some flights to foreign airports rather than to U.S. airports.

If you have any questions or comments on this request, please feel free to call me at 301-279-9727.

The initiation of international flights at LGB is an exciting opportunity for JetBlue and will be a significant improvement in air service options for the Long Beach community. I appreciate in advance your consideration of our request.

Sincerely,



Robert C. Land
Senior Vice President Government Affairs
and Associate General Counsel