



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

Dec 5, 1994

Ms. Janice M. Mittermeier
Airport Director
John Wayne Airport
3151 Airway Avenue,
Building K-101
Costa Mesa, CA 92626

Dear Ms. Mittermeier:

In a letter dated November 28, 1994, letter, from special counsel for Orange County's John Wayne Airport ("JWA"), Orange County requested the opinion of the Federal Aviation Administration ("FAA") concerning proposed amendments to the John Wayne Phase 2 Commercial Airline Access Plan and Regulation ("Phase 2"). The amendments would facilitate initiation of all-cargo operations at JWA by United Parcel Service ("UPS") and Federal Express ("FedEx"). Specifically, you have asked whether these amendments are consistent with the Airport Improvement Program ("AIP") sponsor assurances under the Airport and Airway Improvement Act of 1982, as amended (*repealed and reenacted without substantive change*, Pub. L. No. 103-272, July 5, 1994); the Airport Noise and Capacity Act of 1990, as amended ("ANCA") (*repealed and reenacted without substantive change*, Pub. L. No. 103-272); the Commerce Clause of the U.S. Constitution, and other Federal law.

The FAA is pleased about the initiation of air cargo operations at JWA. As you know, the agency has expressed for some time its concern that the County was not providing access to its Federally funded airport to air cargo carriers. Access on a fair, reasonable, and nondiscriminatory basis is required under AIP sponsor assurances. We appreciate the County's efforts in working with all necessary parties to make air cargo access a reality.

Based on the information provided in the referenced letter and the November 23, 1994, Staff Report, the proposed changes to Phase 2 and related changes to the 1985 U.S. District Court stipulation, do not appear to be inconsistent with the assurances made by Orange County under

the AIP. Neither do they appear to be inconsistent with ANCA. They appear to qualify for exemption under 49 U.S.C. section 47524 (d) (4). Of course, future changes to Phase 2 that restrict access would require compliance with ANCA, and the FAA remains available to respond to other potential compliance issues that may arise in the future under the air cargo access policy that we have not found necessary to consider as part of the current proposal.

We are also pleased that the County chose to provide full Class A annual average daily departures, or ADDs, to the two air cargo applicants. Limiting air cargo carriers to noise levels more restrictive than those that apply to air passenger carriers would have raised serious issues of consistency with the sponsor assurances. While limitations on aircraft type are no longer an issue, other issues may warrant further agency consideration in the future.

We understand that the County's desire to limit the air cargo leases to two years is based in large part upon the County's wish to avoid prejudicing its interests and position concerning possible reuse of MCAS EI Toro. Should the County become sponsor of MCAS EI Toro as well as JWA, and conditions at JWA warrant, Federal law would permit the County to designate MCAS EI Toro as the preferred air cargo airport. However, if MCAS EI Toro were not to become available for air cargo use by 1997 under County sponsorship, we would fully expect air cargo operations to be accommodated at JWA in accordance with the County's grant responsibilities. Assuming that UPS and FedEx remain interested in serving JWA in 1997, the agency would be concerned if the County declined to renegotiate these leases and arrange for continued access.

While we find the treatment of the UPS and FedEx applications acceptable, it is possible that future applications would seek a different set of airport operating rights and limitations than those currently agreed to by UPS and FedEx. We would expect that all future applications for service from air cargo carriers would be addressed in a manner consistent with the County's grant assurance and ANCA obligations.

To conclude, on the basis of the information you have provided, we do not find that adoption of the proposed Phase 2 amendments would violate Federal law or adversely affect application by the County for future AIP grant funds. Our conclusion takes into account the long history and unique circumstances existing at JWA.

Again, the FAA wishes to commend Orange County for its commitment to facilitating air cargo operations at JWA. We also appreciate the County's recognition of the Federal Government's interest in this process; we consider our participation an appropriate and efficient means for identifying areas of concern.

Sincerely,

Barry L. Valentine
Assistant Administrator for Policy, Planning, and International Aviation

cc: Chairperson, Board of Supervisors of Orange County