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INTRODUCTION

1
2 This case is jurisdictionally deficient both because it was not brought within
3 the 12-year statute of limitations of the Quiet Title Act (“QTA”), 28 U.S.C.
4 § 2409a, and because it is unripe. The 1948 Instrument of Transfer (“1948
5 Instrument”), a recorded real estate instrument to which the City of Santa Monica
6 (“The City” or “Plaintiff”) entered voluntarily, explicitly states that, if Plaintiff
7 stops running the property in dispute (“Airport Property”) as an airport, the United
8 States may exercise an option to take title or possession of the land. Thus, the
9 whole world knew 65 years ago that the United States had an interest in the land.
10 In the years since, at various times, the City’s actions have confirmed that it knew
11 about this interest. The QTA statute of limitations has long since run. In addition,
12 Plaintiff’s constitutional claims (Claims Two through Five) are not ripe because
13 the United States has not taken, nor is it about to take, title or possession of the
14 Airport Property. Further, Plaintiff’s claim for equitable and declaratory relief
15 under the Takings Clause is barred by the Tucker Act, 28 U.S.C. § 1491(a)(1),
16 which provides the only avenue for Plaintiff to seek relief on those claims.
17 Plaintiff’s Tenth Amendment claim (Claim Four) should also be dismissed because
18 the United States is not “commandeering” Plaintiff to do anything; the City entered
19 into the 1948 Agreement voluntarily and Congress has not directed Plaintiff to run
20 the Airport Property as an airport in perpetuity. Finally, Plaintiff’s Fifth
21 Amendment “Due Process” claim (Claim Five) fails because there is no
22 government action against Plaintiff, and Plaintiff has not alleged that the 1948
23 Instrument does not further a legitimate purpose.

ARGUMENT

I. The Statute of Limitations Bars Plaintiff’s QTA Claim.

24
25
26 Plaintiff’s claim that it did not know about the United States’ interest in the
27 Airport Property until 2008, and thus that the QTA statute of limitations began to
28 run that year, is plainly implausible, if not simply preposterous. The QTA statute

1 of limitations begins to run when there is a reasonable awareness of the United
2 States' interest. *Shultz v. Dep't of Army*, 886 F.2d 1157, 1160 (9th Cir. 1989);
3 *McIntyre v. United States*, 789 F.2d 1408, 1411 (9th Cir. 1986), quoting *California*
4 *ex. rel., State Land Comm'n v. Yuba Goldfields, Inc.*, 752 F.2d 393, 396-97 (9th
5 Cir. 1985) (citation omitted); *Humboldt Cnty. v. United States*, 684 F.2d 1276,
6 1280 (9th Cir. 1982). The plain text of the 1948 Instrument provided Plaintiff this
7 reasonable awareness. It explicitly states that, in the event the City stops running
8 the Airport Property as an airport, **“the title, right of possession and all other**
9 **rights transferred by this instrument** to [the City], or any portion thereof, shall
10 at the option of the [federal government] revert to the [Government] sixty (60)
11 days following the date upon which demand to this effect is made in writing[.]”
12 1948 Instrument, Compl., Exhibit C at 70. (emphasis supplied). The agreement
13 also states that the condition that the City runs the Airport Property as an airport
14 “shall run with the land,” but that the City could petition the Government in
15 writing to be released from these conditions. 1948 Instrument, Compl., Exhibit C
16 at 69-70. The 2008 order to show cause states nothing different than what the
17 1948 Instrument provides. *See id.* at 70.

18 Plaintiff argues that, somehow, the explicit language of the 1948 Instrument
19 did not make it aware of the Government's interest in the title of the land.
20 According to Plaintiff, it did not then believe that the Government had an option to
21 take title because the Government never had title to begin with. But the 1948
22 Instrument itself is completely self-explanatory. And, knowledge of the claim's
23 full contours is not necessary if there is a reasonable awareness that the United
24 States claims “some” interest adverse to the plaintiff. *See Alaska v. Babbitt*, 75
25 F.3d 449, 452 (9th Cir. 1995). And even an invalid government claim triggers the
26 QTA limitations period. *Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 738 (8th
27 Cir. 2001); *see Gov't of Guam v. United States*, 744 F.2d 699, 701 (9th Cir. 1984).

28

1 In addition to the notice in the 1948 Instrument itself, between 1948 and
2 1984, there were several additional notices of the Government's interest in the
3 Airport Property. *See* Defs.' Mot. at 12-15. Even if those notices did not resolve
4 all issues related to the title of the Airport Property, they provided notice to the
5 City of the Government's claim. *See Yuba Goldfields*, 752 F.2d at 396
6 ("Constructive notice of recorded deeds may commence the running of the
7 limitations period."); *Hawaii v. United States*, 866 F.2d 313, 313 (9th Cir. 1989);
8 *Park Cnty. Mont. v. United States*, 626 F.2d 718, 721 n.6 (9th Cir. 1980). And that
9 is all that is required under the QTA.

10 Plaintiff's contention that the 1952, 1956, and 1958 releases do not
11 constitute reasonable notice is without merit. All three releases demonstrate that
12 the United States had an interest in the Airport Property, that the City recognized
13 this interest, and that the City also recognized that it had to obtain a written release
14 to be released from the conditions of the 1948 Instrument. Plaintiff's transparent
15 attempt to invent a factual dispute in order to convert Defendants' motion to
16 dismiss to one for summary judgment should be rejected. Indeed, such conversion
17 would make no sense; the QTA is jurisdictional, even if a material factual dispute
18 existed with regard to the effect of the notices, a Rule 12(b) motion would be
19 proper. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir.1988) ("[W]hen
20 considering a motion to dismiss pursuant to Rule 12(b)(1) the district court is not
21 restricted to the face of the pleadings, but may review any evidence, such as
22 affidavits and testimony, to resolve factual disputes concerning the existence of
23 jurisdiction.")

24 Plaintiff's contentions with respect to the 1956 Release and the 1984
25 Releases are similarly without merit. Those releases not only provided Plaintiff
26 with further notice of the United States' interest in the Airport Property pursuant to
27 the 1948 Instrument, but demonstrate that the City, by its conduct, acknowledged
28 this interest. Plaintiff cannot cite -- and we have been unable to identify -- a single

1 case or other support for the contention that the United States must affirm all
2 provisions in the 1948 Instrument each time it acts pursuant to that Instrument.

3 Finally, the City showed that it was on notice of the United States' interest in
4 the Airport Property pursuant to the 1948 Instrument through the issuance of legal
5 opinions by its own attorney in 1962 and by the California AG in 1975. *See* Defs.'
6 Mot. at 8-9, 13-14. Although Plaintiff seeks to litigate the merits of the 1948
7 Instrument here, the crucial requirement under the QTA statute of limitations is
8 reasonable notice of the United States' interest, not the ultimate merits of the claim
9 of interest. *See, Alaska v. Babbitt*, 75 F.3d at 452

10 The United States has not abandoned its interest in the Airport Property
11 pursuant to a FAA letter dated April 23, 1971, on which the City relies.¹ In the
12 letter, the FAA notes that it views SMO as an important airport and seeks its
13 continued operation. Although the letter says that the Airport Property "is
14 vulnerable to being ... used for non-airport purposes," this is not an abandonment.
15 The letter does not even discuss or identify the 1948 Instrument, and it is not
16 directed to the City, albeit there is a "cc" to the Airport Director of the SMO.
17 Furthermore, by letter dated June 16, 1971, Arvin O. Basnight, FAA Western
18 Regional Director, to Santa Monica Mayor Anthony Bituri, the FAA informed the
19 City that the FAA had been advised that the City was considering alternative non-
20 aeronautical purposes for the Airport Property and the FAA's position was that the
21 property should be continued to be used as an airport because it was needed as part
22 of the nationwide airport system and because there were many factors which the
23 City needed to address, including the City's obligations under the 1984 Instrument.
24 *See*, Exhibit C. Thus, even under Plaintiff's own tortured reading of the QTA
25 statute of limitations notice requirements, the City was on notice in 1971 and the
26

27 ¹ Attached is a copy of the April 23, 1971 letter found in FAA files. *See* Exhibit B.
28 Neither the second page of Plaintiff's version of Exhibit B nor the FAA copy of the
1971 letter attached as Exhibit B supports Plaintiff's argument.

1 QTA statute of limitations has expired. Indeed, the City cannot meaningfully
2 suggest that the FAA somehow abandoned its interest in a 1971 letter, when in
3 1975, the California Attorney General reviewed the 1948 Instrument as well as
4 various other agreements to which the City was bound (MTD, Ex. C at 39 – 42)
5 and issued an opinion that through the 1948 Instrument and other agreements, the
6 City had “contracted away its rights to deal freely with the Airport property and its
7 uses as an airport.” *Id.* at 42. Thus, the California Attorney General confirmed in
8 1975 that the United States had an interest in the Airport Property pursuant to the
9 1948 Instrument. *Id.*

10 Further, while the 1984 Agreement did reference the 1948 Instrument, it did
11 not constitute an abandonment. Section 1 of the 1984 Agreement explains that the
12 FAA and the City entered into an agreement to resolve a “series of disputes,” but
13 none of these disputes referred to the title to the property or releasing all the
14 Airport Property from the conditions in the 1948 Instrument. Plaintiff’s contention
15 notwithstanding, there is no requirement under the QTA notice requirements that
16 the 1984 Agreement reiterate or address the 1948 Instrument. The 1984
17 Agreement, just as an award of federal funding for improvements to SMO,
18 represent an independent and separate agreement and obligation. Similarly,
19 subsequent references to the continued operation of SMO pursuant to the 1984
20 Agreement do not constitute an abandonment, as there is no express statement
21 regarding the 1948 Instrument in these subsequent statements by the FAA.

22 Finally, Plaintiff argues that the Court cannot resolve the jurisdictional
23 prerequisite of the QTA without litigating the merits of the 1948 Instrument. The
24 Supreme Court has established otherwise. *See Block v. North Dakota ex rel. Board*
25 *of Univ. and School Lands*, 461 U.S. 273, 275- 76, 103 S. Ct. 1811, 75 L.Ed.2d
26 840 (1983) (QTA claim precluded the suit because it was time barred by the
27 QTA's twelve-year statute of limitations); *Gardner v. Stager*, 103 F.3d 886, 888
28 (9th Cir. 1996)), *rev'd on other grounds, Fadem v. United States*, 52 F.3d 202 (9th

1 Cir. 1995). The running of the twelve-year limitations period deprives the federal
 2 courts of jurisdiction to inquire into the merits of an action brought under the QTA.
 3 *Skranak v. Castenada*, 425 F.3d 1213, 1216 (9th Cir. 2005); *see also Spirit Lake*
 4 *Tribe*, 262 F.3d 732, 737-38; *Richmond, Fredericksburg & Potomac R.R. Co. v.*
 5 *United States*, 945 F.2d 765, 769 (4th Cir. 1991).

6 **II. There Is No Jurisdiction Over The Takings Claims.**

7 Plaintiff argues that this Court has jurisdiction over its takings claim because
 8 “the City seeks only equitable relief,” not “monetary compensation[.]” Pl.’s Opp’n
 9 at 21. The Ninth Circuit has rejected this argument several times. *See, e.g., Bay*
 10 *View Inc. v. ATHTNA, Inc.*, 105 F.3d 1281, 1285n.6 (9th Cir. 1997) (“neither
 11 injunctive nor declaratory relief is available for a takings claim against the United
 12 States.”); *In re Nat’l Sec. Agency Telecomm’n Records Litig.*, 669 F.3d 928 (9th
 13 Cir. 2011). The Takings Clause only prohibits a taking “without just
 14 compensation.” *Id.* at 932. Accordingly, “[e]quitable relief is not available to
 15 enjoin an alleged taking ... when a suit for compensation can be brought ...
 16 subsequent to the taking.” *Id.* (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S.
 17 986, 1016 (1984)). The Tucker Act provides a mechanism for pursuing such suit,
 18 so it impedes equitable relief in district court. *Id.* (citing *Bay View*, 105 F.3d at
 19 1285). Here, because the City has “failed to seek just compensation from the
 20 Court of Federal Claims,” there is no jurisdiction. *Id.* *See Mead v. City of Cotati*,
 21 No. C 08-3585 CW, 2008 WL 4963048, at *4 (N.D. Cal. Nov. 19, 2008) (takings
 22 “claim for declaratory judgment is not ripe for review because a taking is not
 23 unconstitutional unless it is uncompensated, and he has not yet sought
 24 compensation.”).

25 Petitioner’s reliance on *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998) is
 26 misplaced.² In *Apfel*, the Supreme Court stated that “the availability of a Tucker

27
 28 ² The passage from *Apfel* Plaintiff relies on is “the opinion of four justices only,
 and thus is not binding on the lower courts.” *Mead*, 2008 WL 4963048, at *6.

1 Act remedy renders premature any takings claim in federal district court.” *Id.* at
2 521. Only when “monetary relief against the Government is [not] an available
3 remedy” can a district court entertain a claim for equitable relief under the Takings
4 Clause. *Id.* The Supreme Court explicitly suggested that a monetary relief is
5 available when the challenged government action allegedly “burden[s] real or
6 physical property[.]” *Id.* Because this suit involves real property, there is no merit
7 to the City’s allegation that it “cannot be justly compensated in monetary terms[.]”
8 Pl.’s Opp’n at 21. *See also Mead*, 2008 WL 4963048, at *6 (dismissing takings
9 claim for declaratory relief because “any taking of Plaintiff’s [real] property could
10 be compensated by a monetary payment, and ... Plaintiff could bring a claim for
11 such compensation under the Tucker Act.”).

12 **III. The Constitutional Claims Are Not Ripe.**

13 Relying on *Aydin Corporation v. Union of India*, 940 F.2d 527 (9th Cir.
14 1991), the City argues that its constitutional claims are ripe. But *Aydin* shows why
15 the City’s claims are not ripe. In that case, the plaintiff sought a declaration that a
16 foreign arbitral award that was “yet to be awarded” could be enforced in the United
17 States. *Id.* at 528. The Ninth Circuit held that the case was not ripe because “[t]he
18 future existence and enforcement in the United States of an Indian award against
19 [plaintiff] is speculative.” *Id.* The same logic applies here. The City seeks to
20 prevent the United States from taking title or possession of the Airport Property in
21 the event the City discontinues using it as an airport. Under the 1948 Instrument of
22 Transfer, only if the City does not use the Airport Property as an airport can the
23 United States exercise an option to take title or possession of the land within 60
24 days. But the City has not stopped using the Airport Property as an airport, and it
25 is speculative that it will do so. It is also speculative that the United States will
26 exercise its option, in the event the City does so. Thus, this action is not ripe.³

27
28 ³ Plaintiff’s reliance on *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 130 S.Ct. 3138 (2010) is misguided. Defendants are not asking

1 The ripeness doctrine “protect[s] the agencies from judicial interference until
2 an administrative decision has been formalized and its effects felt in a concrete
3 way by the challenging parties.” *Nat’l Park Hospitality Ass’n v. Dep’t of Interior*,
4 538 U.S. 803, 807-08 (2003) (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-
5 49 (1967)). Here, the FAA has not taken a formal decision to exercise its option
6 under the 1948 Instrument of Transfer, given that the City continues to run the
7 airport. The City has also not decided not to use the Airport Property as an airport.
8 If it does so, pursuant to the 1948 Instrument, the City can petition the FAA to seek
9 the relief it seeks here. *See* Defs.’s Mot. at 15 (citing Compl. Exh. C at 6, ¶ 6; 49
10 U.S.C. § 47153). Requiring the City to go through that prescribed administrative
11 process to obtain relief may “significantly advance [the Court’s] ability to deal
12 with the legal issues” when they are ripe. *Id.* at 812. Under these circumstances,
13 the issues are not fit for judicial review nor has the City suffered severe hardship.
14 *Id.* at 810-12.

15 **IV. The City Has Failed To State Constitutional Claims.**

16 **1. The City Fails To State A “Regulatory” Takings Claim**

17 The City argues that it has stated a takings claim because it only seeks
18 equitable relief and the alleged taking cannot be compensated through monetary
19 damages. Pl.’s Opp’n at 24. This claim is implausible on its face. “[N]either
20 injunctive nor declaratory relief is available for a takings claim against the United
21 States.” *Bay View*, 105 F.3d at 1285 n.6. And because this suit concerns real
22 property, the City can be compensated under the Tucker Act. *See Mead*, 2008 WL
23

24 Plaintiff to incur a sanction, as the government was asking the plaintiffs in Free
25 Enterprise Fund to do, before seeking relief. For one thing, a government decision
26 to exercise an option to take title to the airport would not be a sanction for
27 wrongdoing; it would be a result of a City decision – a result to which Santa
28 Monica agreed in 1948 if it later made such a decision. Further, if Santa Monica
makes such a decision, and if the United States exercises its option, the City might
then have a ripe claim.

1 4963048, at *6. Thus, the City has failed to state a Takings claims. *See* Defs.’
2 Mot. at 18-19.

3 4 **2. The City Fails To State A Tenth Amendment Claim**

5 The City alleges that the FAA has violated the Tenth Amendment in
6 commandeering the City to run the airport in perpetuity. Compl. ¶ 117. This claim
7 fails as a matter of law. The Tenth Amendment prohibits Congress from “simply
8 ‘commandee[ring] the legislative processes of the States by directly compelling
9 them to enact and enforce a federal regulatory program.’” *New York v. United*
10 *States*, 505 U.S. 144, 161 (1992) (quoting *Hodel v. Va. Surface Mining &*
11 *Reclamation Ass’n, Inc.*, 452 U.S. 264, 288 (1981)). Neither Congress nor the
12 FAA has commandeered the City to do anything. It was the City that requested the
13 Government to enter into a transfer agreement under the Surplus Property Act
14 “subject to such conditions as the Administrator may desire to impose” under
15 applicable regulations. Defs.’ Mot. at 4-5. The agreement the City voluntarily
16 entered into gives the FAA an option to take title or possession of the land if the
17 City does not run it as an airport. But the City is not required to run the property as
18 an airport in perpetuity. If it wants to stop running it as an airport without risking
19 losing title, it can petition the FAA in writing. *See id.* at 15. Because the
20 Government did not compel the City to enter into this agreement, the City has no
21 Tenth Amendment Claim. *See California v. U.S.*, 104 F.3d 1086, 1092 (9th Cir.
22 1997) (no claim under Tenth Amendment because State voluntarily agreed to
23 federal program).

24 **3. The City Fails To State A Due Process Claim**

25 The City has also failed to state a Due Process claim because it has not been
26 deprived of property without due process of law. The City continues to run the
27 property as an airport, so the option for the Government to take title or possession
28 has not emerged. The mere existence of the 1948 Instrument of Transfer giving

1 the Government an option to take title if certain conditions are met is insufficient
2 to allege a due process violation because the Government has not taken any action
3 to enforce the 1948 Instrument against Plaintiff. *See Action Apartment Ass'n, Inc.*
4 *v. Santa Monica Rent*, 509 F.3d 1020, 1027-28 (9th Cir. 2007) (no due process
5 violation because the government had not enforced eviction requirements against
6 plaintiff). In any event, Plaintiff does not allege that the 1948 Instrument serves
7 no legitimate governmental objective, and it cannot be arbitrary or irrational
8 because the City voluntarily agreed to its conditions more than half a century ago.
9 *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542, 161 L.Ed.2d 876, 125 S. Ct.
10 2074 (2005).

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CONCLUSION

For the foregoing reasons, the Court should dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

DATED January 27, 2014

Respectfully Submitted,

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1 Defendants respectfully submit this Index of Exhibits and Exhibits attached
 2 hereto in support of its Reply in Support of Defendants' Motion to Dismiss.

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A	The Declaration of Sharon Long dated January 23, 2014, in Support of Defendant United States of America Reply	15-16
B	A true and correct copy of a letter from the FAA to Mr. Max Karant, dated April 23, 1971	17-18
C	A true and correct copy of a letter from Arvin O. Basniht to the Mayor of Santa Monica, dated June 16, 1971	19-21

11 DATED January 27, 2014

12 Respectfully Submitted,

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23 **UNITED STATES DISTRICT COURT**
 24 **CENTRAL DISTRICT OF CALIFORNIA**

25 CITY OF SANTA MONICA,
 26
 27 Plaintiff,
 28
 v.
 UNITED STATES OF AMERICA, et
 al.
 Defendants.

No. 13-08046 JFW (VBKx)
**DECLARATION OF SHARON LONG IN
 SUPPORT OF DEFENDANT UNITED
 STATES OF AMERICA'S REPLY**
 Honorable John F. Walter

DECLARATION OF SHARON LONG

I, Sharon Long, do hereby state and declare as follows:

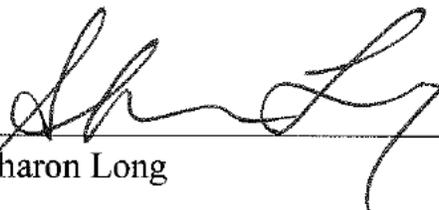
1. I am a paralegal at the Federal Aviation Administration, where I have worked since 1996.

2. The information provided in this declaration was obtained in the course of my official duties.

3. I hereby certify that the two documents listed in paragraph four, which are submitted in support of Defendant's Reply, are true and correct copies of official documents from the Federal Aviation Administration. These documents were maintained and kept in the course of the agency's regularly conducted official activities.

4. Exhibit B is a true and correct copy of a letter from the FAA to Mr. Max Karant, dated April 23, 1971. Exhibit C is a true and correct copy of a letter from the Arvin O. Basniht to the Mayor of Santa Monica, dated June 16, 1971. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 27, 2014, at Washington, DC.



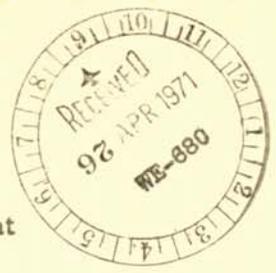
Sharon Long

EXHIBIT B

LAX-600

Compliance

23 APR 1971



Mr. Max Karant
 Senior Vice President
 Aircraft Owners and
 Pilots Association
 Washington, D. C. 20014

Dear Mr. Karant:

I appreciate and share your concern about the future of the Santa Monica Airport.

The Federal Aviation Administration is doing those things available to us to assure the continued availability of this important airport which is now serving some 500 based aircraft. Yet, like many others, Santa Monica Airport is vulnerable to being discontinued and its land used for non-airport purposes. The challenge, it seems to us, is in the frontier of having the good things aviation offers people sufficiently appreciated by the total public to protect this irreplaceable facility.

Federal funds in the sum of \$219,421 have been expended for the development of this airport by reason of six Grant Agreements between the United States and the City of Santa Monica under the Federal-aid Airport Program. These agreements remain in effect for a period of twenty years from the date of acceptance. The most recent of these Grant Agreements was accepted by the City of Santa Monica on 24 July 1968, and will by its terms expire as of 23 July 1988.

The Grant Agreements contain certain assurances on the part of the sponsor including the obligation to operate and maintain the airport in a safe and serviceable condition throughout the term of the agreements. In the event the City of Santa Monica should move to close the airport, our first course of action, from a legal procedural point of view, would be to declare the City in default of its obligation of its Grant Agreements. This would put us in the posture of the federal government seeking recovery of the funds expended.

Should the City permit the airport to deteriorate, this could also result in a finding of non-compliance with the Grant Agreements and cause a declaration of default. While these actions are only safeguards, they basically constitute the range of federal legal authority. The current indications are that the City of Santa Monica is satisfactorily maintaining the runways and taxiways so as to meet its obligations. In this sense, the airport is being adequately maintained and properly operated.

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Page 2

You may be assured that we consider Santa Monica Airport an important part of the national air transportation system--its location and service to the public would be difficult, if not impossible, to replace. Within the framework of statutory authority and regulations we will extend ourselves to assure it is continued for the use and benefit of the public.

In addition to the grant-in-aid funds that have been made available for this airport, there are other federal investments including the airport traffic control tower, the TVOR, REIL and VASI, which collectively represent an additional investment of \$710,000 federal funds which serve to support the conclusion of the importance to aviation of this facility.

We regret the delay in answering your inquiry and trust that this data is responsive to your interests. Should you have further questions, please let us know.

Sincerely,

Original signed by
ARVIN O. BASNIGHT
ARVIN O. BASNIGHT
Director

cc:
LAX-600

WE-660:DJPeterson:paa:4/20/71
WE-600:CJWinger:paa:4/20/71
Rewritten: AOBasnight:brn:4/23/71

EXHIBIT C

16 JUN 1971

LAX 600

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Conyham

file

Honorable Anthony Dituri
Mayor of Santa Monica
1685 Main Street
Santa Monica, California 90401

Dear Mayor Dituri:

We have been informed that the City of Santa Monica is considering alternative uses of the property presently used for the Santa Monica Airport. I respectfully suggest, at the outset, that retention of the Santa Monica Airport in our transportation system requires consideration of many factors other than direct economic returns, not the least of which is the fact that air transportation in Southern California is highly dependant upon the continued operation by multiple municipalities of all the existing airports serving our complex community. This is as true for Santa Monica as it is for the continued operation of Los Angeles International Airport.

Mr. C. V. Fitzgerald, Airport Director of the Santa Monica Municipal Airport, has provided me with a copy of the report dated 5 January 1971, entitled "Analysis of Airport and Alternative Uses for the Santa Monica Airport Property" prepared for the City of Santa Monica by Economic Research Associates of Los Angeles, California. I understand the report was prepared for the City in order to plan for the future use of the airport property and presents a number of alternative land use potentials. The ERA report concludes that if the current use of the property as an airport should be terminated and alternative development undertaken, that the annual revenue accruing to the City from other uses could approach ten times that presently being derived from the airport.

Obviously, the City of Santa Monica must appraise realistically the financial implications of the projected revenue from alternative uses. However, once the decision is made to eliminate the airport, whether instantly or on a time phase basis, it can no longer be developed and, eventually, will be removed from the national air transportation system. We realize that ERA was retained to provide economic facts and while it is not our intention to be critical, it is suggested that further study might be made to evaluate the indirect economic, sociological, or ecological benefits derived from the continuing use of the property as a public airport, or conversely, to evaluate the effect upon human environment in the

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community by the concentration of light industry, commercial stores, hotels, condominiums, and high-rise office buildings in this area in place of the airport. Furthermore, a greater in-depth study and evaluation might also be made of the potential commercial aviation use value of the airport.

I am sure that the City Council will desire to weigh all the factors before reaching any decision of this importance. My purpose in writing you at this time is to focus on the importance of the Santa Monica Municipal Airport to the national air transportation system. This is exemplified by the fact that Santa Monica Airport ranks 25th in total aircraft operations out of 335 airports in the United States being served by FAA air traffic control towers. Thus, in terms of total aircraft operations it is busier than airports such as Boston, St. Louis, Pittsburgh, and Washington National. Although Santa Monica is not presently served by air carriers it should be noted that out of the 323,589 total aircraft operations in Calendar Year 1970, 163,243 were classed as general aviation itinerant operations. In other words, Santa Monica, which ranks 11th in this classification contributes significantly as a reliever airport for general aviation itinerant air traffic. If all of these operations were forced to switch to Los Angeles International Airport it could only result in serious delays or a significant reduction in air carrier operations at Los Angeles. Presumably the residents of the City of Santa Monica as part of the general populace would thereby be inconvenienced. I might add that the loss of any one of the reliever airports in the greater Los Angeles area having significant general aviation itinerant traffic such as Serrano with 171,574 such operations, Hawthorne with 125,317 itinerant operations, Fullerton with 123,248 itinerant operations, or Van Nuys with 313,551 itinerant operations would greatly burden the air transportation system.

It is in recognition of the importance of general aviation reliever airports that the Federal Government has been willing to participate in the development of airports such as Santa Monica under the Federal Aviation Act of 1945 and the Airport and Airway Development Act of 1970. As you know, Santa Monica Municipal Airport was initially developed during World War II when the Federal Government expended some \$795,959 after the City leased the airport to the government. Following the return of the leasehold interest the CAA/FAA participated in six development projects of which the total Federal share amounted to \$219,421. In addition to the Grant-in-Aid funds other Federal funds have been expended on air navigation facilities such as a new airport traffic control tower, the TVOR, HNIL, and VAOI, which collectively represent an additional investment of \$710,000 all of which was considered necessary in order to retain Santa Monica Airport in the national air transportation system.

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Aside from the money expended for National Defense, most of the aforementioned investments were made on the basis that the City of Santa Monica was willing to make certain commitments. The legal contracts have been reviewed and explained in detail in a formal legal opinion dated 23 January 1962 by Mr. Robert G. Cockins, City Attorney of Santa Monica. Particularly, the City Attorney pointed out that the "Instrument of Transfer" wherein the United States in August of 1948 surrendered its leasehold interest in the airport and assigned to the City certain easements, structures, improvements, and chattels, contained a clause whereby no property transferred under the agreement could be used, leased, sold, salvaged, or disposed of by the City of Santa Monica for other than airport purposes without the written consent of the Federal Government. Further, the Instrument of Transfer provides that if these terms are not observed or complied with, the title, right of possession, and all other rights transferred, revert to the Federal Government unless cured within sixty days of notice of default. The City Attorney also pointed out that the Grant Agreements executed by the City of Santa Monica in order to obtain Federal funds to develop Santa Monica Airport under the Federal Airport Act of 1946 require the City to suitably operate and maintain the airport and all facilities thereon for airport purposes. The latest Grant Agreement was accepted by the City of Santa Monica on 23 June 1968 and by its terms remains in effect for twenty years, that is, until 23 June 1988.

The Federal Aviation Administration 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 to the Government. To do otherwise would seriously impair the national air transportation system and particularly would be detrimental to the residents of all of Southern California who are dependent in one way or another upon air transportation.

The availability of a network of airports such as Santa Monica has helped to make the United States transportation system the greatest in the world and is essential to the continued economic growth of the country and this community. We therefore strongly urge that the airport be continued in operation.

Sincerely,

ORIGINAL SIGNED BY
ARVIN O. BASNIGHT

ARVIN O. BASNIGHT
Regional Director

cc:
GC-1
AS-1
OP-1
WE-200
WE-400
WE-500
WE-600
LAX-600

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