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April 22, 2016

Office of the Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Ave. S.W.
Washington D.C. 20591

Re: Answer to Respondent’s Motion to Dismiss (Docket No. FAA-16-16-02)

Mark Smith, Kim Davidson Aviation, Inc., Bill’s Air Center, Inc., Justice Aviation, Inc., National Business Aviation Association, Inc. and Aircraft Owners and Pilots Association, Inc. v. City of Santa Monica, California

Dear Sir or Madam:

Pursuant to 14 C.F.R. § 16.26(b)(3) and 14 C.F.R. § 16.17(c), Mark Smith, Kim Davidson Aviation, Inc., Bill’s Air Center, Inc., Justice Aviation, Inc., National Business Aviation Association, Inc. and Aircraft Owners and Pilots Association, Inc. (collectively “Complainants”) respectfully submit this Answer to the Motion to Dismiss and supporting Memorandum ("Motion") filed in this docket on April 11, 2016 by the City of Santa Monica, California (the “City” or “Respondent”).

Preface

The City’s Motion seeks to dismiss one of the four claims of the underlying complaint (“Complaint”). Section IV of the Complaint alleges that the City has failed to make leases available to SMO tenants in compliance with its federal obligations, as set forth both in the Airport’s 1948 surplus property deed (which on its face remain effective in perpetuity) and in Airport Improvement Program (“AIP”) grant agreements (which the FAA has ruled remain effective through 2023). See Complaint ¶¶ 137-153. The City argues that the adoption of a leasing policy (the “Policy”) by the City Council on March 22, 2016 moots
this claim. It also argues that any facial challenge to the Policy cannot be considered by the Federal Aviation Administration ("FAA") in this proceeding because Complainants cannot show that the Policy is invalid "in all its applications." Both arguments are wrong. For the reasons set forth in the following sections of this Answer, the Motion fails to meet the requirements of 14 C.F.R. § 16.26(b)(1)(ii) and accordingly should be denied by the FAA.1

The City does not seek the dismissal of the balance of the Complaint, and indeed appears to concede that, as alleged by Complainants, it has collected excessive interest on loans to the Airport (Complaint ¶¶ 57-65) and has failed to collect fair market rent from Santa Monica College for the college’s non-aeronautical lease of Airport property (Complaint ¶¶ 127-136), suggesting that the City will evaluate some corrective measures. Conversely, it claims that its new landing fees (Complaint ¶¶ 69-126) “completely conform with all applicable federal requirements.” See Motion, at 7 n.3. While various legal and factual questions with respect to these issues remain to be resolved, Complainants are obliged to note that:

- The revenue diversions alleged in the Complaint occurred over many years in the case of improper loans, and over several decades in the case of Santa Monica College rents, and both involve City and Airport books and records that are internally inconsistent and of questionable provenance and accuracy. See, e.g., Complaint ¶ 47 (backdated purported loan agreements); ¶ 48 (backdated and conflicting loan agreements); ¶¶ 66-68 (misallocation and diversion of new revenues).

- The landing fees are directly and substantially impacted by this revenue diversion, which necessarily resulted in reduced Airport net revenues over a period of many years, and from which the City’s landing fee computation cannot be segregated. Moreover, as alleged in ¶¶ 87-111 of the Complaint, the books and records on which the landing fee calculations were based are not only internally inconsistent, but are in some instances missing entirely and frequently involve attributions (such as for indirect and legal expenses) that are clearly improper.

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1 In the Background section of its Motion, the City purports to summarize the foundations of the City’s obligations as well as the pending disputes before both the FAA and the Ninth Circuit Court of Appeals regarding those obligations. Unfortunately, many of the City’s representations are inaccurate. For example, the City asserts that not until 2008 did it become aware that the FAA understood the Airport’s surplus property deed to obligate Santa Monica to operate SMO as an airport in perpetuity, upon condition of reversion. See Motion at 3-4. In addition to the finding to the contrary of the District Court (City of Santa Monica v. United States, 2014 WL 1348499, *9-10 (February 13, 2014)), a former City Assistant Attorney (and former Acting City Attorney) has specifically testified under oath that the City was aware of (although it disagreed with) the FAA’s position as early as 1981. See Exhibit 78, at 10-12 (attached).
It was for these reasons that Complainants requested that any order directing corrective action include the requirement of an independent audit of all relevant City and Airport books and records. Given the City’s tangled, multi-year and ongoing manipulation of Airport revenues and expenses, Airport finances cannot now be entrusted to the City to “correct” and “adjust.” Both Complainants and the FAA (as well as the residents of the City) are entitled to an objective and trustworthy review of the City’s dealings with the Airport.2

I. The City’s Promulgation Of A Leasing Policy Does Not Moot Section IV Of The Complaint

Section IV of the Complaint alleges that the City was not in compliance with its federal obligations because: the leases of Airport tenants had expired en masse on July 1, 2015; the City repeatedly had deferred negotiations with aeronautical Airport tenants for anything beyond insecure month-to-month tenancies;3 and that to the extent a leasing policy had been proposed (but its adoption repeatedly delayed), the proposal included numerous impermissible terms that would flatly violate the City’s federal obligations if adopted. See id. ¶¶ 137-153.

The City now asserts that its adoption of the Policy (officially denominated as the “Airport Licensing and Leasing Policy”) on March 22, 2016 effectively moots section IV of the Complaint, because it brings the City into current compliance with its obligations. See Motion, at 8. But that is simply not the case. As an initial matter – as anticipated – the Policy includes numerous provisions directly at odds with the City’s federal obligations. Far from a “cure” for the violations alleged, it greatly exacerbates them, imposing a set of ambiguous, often indecipherable and mainly illegal requirements on Airport tenants. For example:

- The Policy’s stated goals include “an airport tenant mix” that “[i]s harmonious with the nearby built environment by protecting the health and safety of Airport neighbors” and “[f]osters uses and practices that are sensitive to the environment and protect the health of Airport neighbors and users and protect the City from future environmental damage exposure.” See id. at 1.

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2 City officials continue to inform the public that the Airport is indebted to the City in the amount of either $13 million (see Exhibit 79, at 1-2 (attached)) or $16 million (see Exhibit 12), both of which the City knows to be untrue.

3 In contrast, various non-aeronautical tenants of SMO recently have been offered or granted long-term leases. See, e.g., Complaint ¶ 144(g).
• The Policy provides that: “no lease shall have a term that goes beyond June 30, 2018.” See id. at 2 (§ B(1)).

• The Policy provides that all leases “shall be reviewed to assess potential negative consequences on the environment.” See id. at 2 (§ B(2)).

• The Policy provides that: “[a]ll lessees shall use the airport and any airport property in a manner that is compatible with City policies and with the adjacent residential uses; to encourage activities that complement adjacent residential and commercial uses; and to establish practices that are sensitive to the environment and protect the City from future environmental exposure.” See id. at 4 (§ C(1)).

• The Policy provides that: “The City will request hangar owners to avoid from [sic] performing pattern operations at Santa Monica airport during weekends, holidays, and evening hours.” See id. at 5 (§ C(5)(b)).

These and other provisions in the Policy clearly are intended to enable the City to condition leases to aeronautical tenants on terms that are inconsistent with the City’s federal obligations, and as a result, the adoption of the Policy in no way moots section IV of the Complaint.

For example, the FAA previously has established that only environmental restrictions which are rationally related to environmental problems that actually exist at an airport are permissible. See, e.g., Centennial Express Airlines v. Arapahoe County Public Airport Authority, docket no. 16-98-05, Director’s Determination, at 20 (August 21, 1998). But the Policy would enable the City to condition tenant leases on nebulous concepts of “harmony” and “compatibility” – with reference to the interests of off-airport entities, not the airport itself. The FAA has established – such as through its interpretation of grant assurance no. 21 – that an airport sponsor is obligated to ensure that land uses near an airport are compatible with the airport, not the other way around. See, e.g., FAA Order 5190.6B, Chapter 20. An obligated airport must prioritize the interests of aviation. See, e.g., Sun Valley Aviation, Inc. v. Valley International Airport, City of Harlingen, Texas, docket no. 16-10-02, Director’s Determination, at 64 (December 11, 2012) (“the sponsor has put forth no value or priority in pursuit of the public’s interest in civil aviation”); United States Construction Corporation v. City of Pompano Beach, Florida, docket no. 16-00-14, Final

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4 Section E(1) of the Policy states that leases for terms of occupancy beyond June 30, 2018 require City Council approval, but appears to be meaningless in light of the specific prohibition on such leases set forth in § B(1). See id. at 6-7.

5 Notably, the City’s policies include “the closure of the Santa Monica Municipal Airport as soon as possible.” See Complaint ¶ 19.
Agency Decision, at 21 (July 10, 2002) (“[o]perating the airport for aeronautical use is not a secondary obligation; it is the ‘prime obligation’

The Policy’s “harmony” and “compatibility” language is also impermissibly vague. As discussed infra, even the Policy’s author was unable to explain the meaning of its basic terms beyond circular references to those very same terms. See also Cedarhurst Air Charter, Inc. v. County of Waukesha, docket no. 16-99-14, Final Decision and Order, at 12 (August 7, 2000) (holding that vague airport policy amounted to a violation of the grant assurances).

Likewise, the Policy suggests that hangar leases will be denied unless prospective occupants agree to the City’s “request” that they limit their pattern operations, a transparent effort at an end-run of the obligations of grants assurance no. 22 (and the parallel deed obligations) by “voluntary” measures that in practice are likely to be mandatory. See, e.g., Jim De Vries v. City of St. Clair, Missouri, docket No. 16-12-07, Director’s Determination, at 26-27 (May 20, 2014) (leasing practices used as “a means to dissuade, intimidate, or otherwise turn away potential tenants” are impermissible); Maxim United, LLC v. Board of County Commissioners of Jefferson County, Colorado, docket no. 16-01-10, Director’s Determination, at 18 (April 2, 2002) (“[t]he Respondent cannot avoid its Federal obligation by securing an agreement to the contrary from the tenant”).

Finally, the longest-term lease available under the Policy to a tenant will be no more than 27 months (to an end date of July 1, 2018, a date which is seemingly arbitrary) despite an airport sponsor’s general obligation to make long-term leases available. See, e.g., Santa Monica Airport Association v. City of Santa Monica, California, docket no. 16-99-21, Director’s Determination, at 22 (November 22, 2000) (noting that Santa Monica was obligated to offer leases consistent with the duration of the federal obligations at issue in that proceeding; see also footnote 12); Skydance Helicopters, Inc. v. Sedona Oak-Creek Airport Authority, docket no. 16-02-02, Director’s Determination, at 32 (March 7, 2003) (airport authority concluded to be non-compliant because it had not offered lease terms

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6 Not only do these veiled threats conflict with Santa Monica’s deed- and grant-based obligations, but they also would effectively dictate how SMO-based aircraft can operate in navigable airspace – a matter within the exclusive jurisdiction of the FAA. See, e.g., FAA Order 5190.6B § 13.2(a)(1); In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California, docket no. 16-02-08, Director’s Determination, at 1 (May 27, 2008) (“Federal aviation law preempts local ordinances such as the City's designed to control flight operations and impede safe and efficient airspace management”). Under limited circumstances, an airport may with FAA approval limit an entire class of operations for airspace safety or efficiency reasons. But Santa Monica did not even request (much less obtain) approval for its lease terms – and because the pattern restrictions would be implemented on a tenant-by-tenant basis and would not affect non-tenant flights, the lease terms further impermissibly would burden individual operators. See, e.g., FAA Order 5190.6B § 14.4(a).
commensurate with the remaining term of its lease – and potentially longer, even if there was possibility that lease would not be renewed).7

Indeed, so flawed is the Policy that it has attracted criticism from the Santa Monica Airport Commission – a panel stacked with opponents of operations at SMO that ordinarily will favor any proposal intended to restrict operations (see Complaint ¶ 30). On March 15, 2016, Nelson Hernandez, Senior Advisor to the City Manager for Airport Affairs, appeared before the Commission to explain the Policy, which he had drafted, and members of the Airport Commission were obviously frustrated by his vague and circular explanations of the Policy’s terms:

**Commissioner Stephen Mark:** Can you expand on what you mean by “compatible” and “standards” when you are talking about compatible with the surrounding area, and by environmental standards what standards exactly and who is setting the standards? And actually for that matter, who is going to do the environmental reviews?

**Mr. Hernandez:** Well the standards are compatibility with the local community in terms of noise, pollution, and other operational matters like that.

**Commissioner Mark:** The FAA at the moment argues that they are compatible with noise and pollution, so I’m wondering who is going to decide that, and what are they going to use as their index?

**Mr. Hernandez:** They will use this leasing policy and the decision will be made by the City Manager. If it is approved by the City Council, it is delegated to him.

**Commissioner Mark:** So the City’s staff is going to have people who can do environmental reports? And environmental impact reports?

**Mr. Hernandez:** Well the City does environmental impact reports all the time.

**Commissioner Mark:** And so can you give me an example of, well for example, how would you, what do you think would be the result of some of the airport meetings ...

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7 The City previously represented to the FAA that “the City Council has previously voted to offer three (3) year lease extensions which would run through June 30, 2018 that and is in the process of considering proposed leasing guidelines.” See the City’s motion to dismiss in docket no. 16-14-04, at 3 (August 14, 2014). The City for unspecified reasons has maintained June 30, 2018 as an arbitrary expiration date for any new leases, and thus has diminished the maximum term to considerably less than three years despite the 18+ month delay in actually adopting the Policy and offering lease extensions (the latter of which, in fact, has yet to occur, and thus the maximum term may be even shorter).
neighborhood compatibility noise and pollution standards? Do you think that the airport does now?

Mr. Hernandez: Well I’m not going to answer hypothetical questions. When we get a real application we'll give you a real answer. But it's not really ... when we have real applications we can do a real test.

Commissioner Mark: But they’re going to be based on some specified ... I mean if you’re a company and you want to lease here and you want to decide “does my company pollute or not according to the city” do they have to go through the whole study first? How is anyone going to know?

Mr. Hernandez: I think that’s a case-by-case basis. They may have to; they may not. I think we’re going to have to see with the specific application that’s in front of us.

Commissioner Mark: But if you are applying for a lease, what do you look to, to know, if it makes sense that you’re going to fall afoul of the standard or not? It just seems it’s vague to me what the standard....

Mr. Hernandez: We have applications from some of the former Gunnell subtenants, and there’s a section in there in which they describe their operation, so we’ll take a look at what they said they’re going to do.

Commissioner Mark: So you are not going to publish any type of standard for people to use as a basis for deciding whether it makes sense for them to apply?

Mr. Hernandez: The standard is compatibility with the surrounding community.

Commissioner Mark: Uh. Okay.8

To put it mildly, that the City official who drafted the Policy is unable to provide a coherent explanation of its standards should deeply trouble the FAA – especially given the City's long history of defiance and non-compliance. Under those circumstances, there is certainly no

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8 An audio recording of the Santa Monica Airport Commission’s March 16, 2016 meeting is available at [http://santamonica.granicus.com/viewpublisher.php?view_id=6](http://santamonica.granicus.com/viewpublisher.php?view_id=6). The quoted exchange occurs at 21:10 - 24:20 – only one of many in which Hernandez refused to provide specifics (e.g., the Commission also inquired why the Policy doesn't actually mention aeronautical uses and “on its face is precluding leasing to aviation tenants”; Hernandez responded that aeronautical uses – which, as the FAA is aware, should be the priority at an airport – are adequately accounted for by an “other uses required by law” provision, presumably meaning section A(1))). An unofficial transcript of Hernandez's presentation and the Airport Commission's responses is attached as Exhibit 79.
basis to argue that the adoption of the Policy moots the concerns raised in this docket by Complainants.

Moreover, even if the Policy were not fundamentally flawed, its mere adoption by the City Council would not moot section IV of the Complaint. DOT precedent establishes that a Part 16 complaint can be dismissed when and only when an airport achieves current compliance with its federal obligations. That requires more than the adoption of a policy that possibly could be compliant if and when implemented.

In fact, the City always has had the power to grant compliant leases, even before the adoption of the Policy. But with or without the Policy, it still has not done so, and nothing in the Policy compels it to do so; the Policy equally allows the Airport to deny every lease request and to evict every aeronautical tenant. As the FAA previously has established, only after “the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations” will the FAA consider dismissal of the allegations. See Desert Wings Jet Center, LLC v. City of Redmond, docket no. 16-09-07, Director’s Determination, at 14 (November 10, 2010). The cases cited by Respondent actually reaffirm this principle – i.e., corrective action must be under way if not already completed. See Thermco Aviation, Inc. v. City of Los Angeles, docket no. 16-06-07, Final Agency Decision, at 25 (December 17, 2007). And, if anything, the City’s current action in seeking to evict an aeronautical tenant without cause (as specifically attested by the City Manager in a deposition on February 22, 2016) demonstrates that whatever the words that the City has committed to paper, its actual deeds have not only failed to resolve the problems asserted by section IV of the Complaint but also further demonstrate active non-compliance. See 41 North 73 West Inc. d/b/a Avitat Westchester v. Westchester County, New York, Director’s Determination, no. 16-07-13, at 31 (June 12, 2008), aff’d Final Agency Decision (September 18, 2009) (“the FAA considers an airport sponsor’s actions, not the verbiage of leases or rules”).

9 See also 14 C.F.R. § 16.109(f) (“when the Director determines that the respondent has corrected the areas of noncompliance, the Director will terminate the proceeding”); Air Transport Association of America, Inc. v. City of Los Angeles, docket no. 13-95-05, Final Decision and Order, at 53 (June 1, 2009) (noting that hearing provisions of Part 13 and Part 16 are inapplicable if an airport sponsor has submitted “a corrective action plan that is acceptable to the FAA”) (emphasis added).

10 In its Motion, the City cryptically (and misleadingly) refers to “[e]fforts ... to resolve the claims” of Justice Aviation, Inc. (“Justice”; see id., at 7 n.4), one of Complainants. The City in fact has sought to evict Justice from its leasehold – and is doing so without specific cause, according both to Hernandez and the sworn deposition testimony of the City Manager, Rick Cole (and despite the City’s federal obligations). The eviction is set for trial on May 10, 2016 (Los Angeles Superior Court no. 16R00754). Justice has also filed its own 14 C.F.R. Part 16 complaint (docket no. 16-16-07) which further documents this matter (including excerpts from Cole’s deposition), as well as a federal complaint (C.D.Cal. no. 16-CV-2043).
II. The “Facial Attack” Standard Cited By Respondents Is Inapplicable; Complainants Need Not Show That The Policy IsInvalid In All Applications

Respondents additionally argue that to the extent that the FAA in this docket entertains a challenge to the Policy (which it most certainly can), that challenge should be denied because Complainants cannot show that no set of circumstances exist under which the Policy would be valid. See Motion, at 10-11. But the case law cited by Respondent concerns the predicates for facial challenges to the constitutionality of statutes in an Article III tribunal. This is not a facial challenge to the City’s obligations – as stated in the Complaint, its non-compliance already affects Complainants (see Complaint ¶ 154) and indeed destabilizes the entire Airport by discouraging tenant investment and encouraging them to relocate elsewhere (presumably the City’s intended endgame).

Further, no authority is cited by the City to show that a “facial attack” standard is applicable to a challenge pursuant to 14 C.F.R. Part 16 of an airport sponsor’s compliance with its deed/contract-based federal obligations. So far as Complainants are aware, there is no such authority. Cf. National Treasury Employees Union v. OPM, 76 M.S.P.R. 244, 251 (1997) (denying a similar argument against the review of a regulation, explaining that “the rule that courts should not strike down a statute on its face unless it is invalid in every application is based upon the proper role of the judiciary in the constitutional scheme” and “is not relevant to a determination of the Board’s authority”); NAACP v. FCC, 46 F.3d 1154, 1161 (D.C.Cir. 1995) (“unlike the case or controversy requirement for a federal court ... an agency may issue a declaratory order to terminate a controversy or remove uncertainty”).

In fact, the FAA itself repeatedly has established that in Part 16 proceedings it may address current practices that are likely to result in future violations – which should include the vague and impermissible terms of Santa Monica’s Policy, even if the FAA should deem that the City has not yet violated its federal obligations in that regard. See, e.g., JetAway Aviation LLC v. Board of Commissioners, Montrose County, Colorado, docket no. 16-06-01, Director’s Determination, at 34 (November 6, 2006) (warning respondent that UNICOM frequency must be reclaimed by the airport from the existing FBO to which it had been assigned when a second FBO contract was awarded); Town of Fairview, Texas v. City of McKinney, Texas, docket no. 16-99-04, Director’s Determination, at 17 (July 26, 2000) (FAA specified that it could hear a complaint which alleged that an airport’s current noncompliance with wildlife mitigation requirements would lead to future hazards, so long as the complainant “demonstrate[d] a realistic danger of sustaining direct injury”); National Business Aviation Association v. City of Santa Monica, California, docket no. 16-14-04, Director’s Determination, at 9 (December 4, 2015) (noting “high likelihood of a future violation” by Santa Monica).
Additionally, although the City disputes that its delay in promulgating the Policy itself amounted to a denial of reasonable access, see Motion at 15, the FAA has made clear that undue or indefinite delay is not permissible. See, e.g., United States Construction Corporation v. City of Pompano Beach, Florida, docket no. 16-00-14, Director's Determination, at 18 n.63 (August 16, 2001). Nor, based on the chronology set forth in the Complaint (see ¶ 144), can Respondent credibly claim that the delay was caused by “the City Council deliberat[ing] extensively on alternatives.” Long periods elapsed without any action by the City – and without any “legal developments” that would justify further delay; the City has introduced no evidence or even any suggestion of other relevant work during that timeframe. Simply put, for purposes of the motion to dismiss, it is uncontradicted that the City dragged its feet in adopting (and still has yet to actually implement) the Policy.

III. The City’s Purported “Reasonable Balance” Is Neither Reasonable Nor Legal

The City devotes the rest of its Motion to the argument that the Policy as adopted is a “reasonable balance” between the City’s position that it is no longer subject to any federal obligations and the FAA’s position that its grant-based obligations extend through 2023 and its deed-based obligations are perpetual, and asserts that as a further reason that section IV should be dismissed. See Motion, at 12-15. This argument is equally unavailing; it is really no more than an assertion that airport sponsors are free to adopt and implement their own interpretations of their federal obligations – and the reasonableness of them – without FAA oversight, simply because they interpret the law differently from how the FAA or the courts interpret it. That is not the law.

As an initial matter, although Complainants do not contest that the term “reasonable” – as used in grant assurance no. 22 and the equivalent surplus property deed obligation – does not mean that airport tenants are entitled to lease terms of their choosing (see Motion, at 12), it also does not mean that an airport sponsor may – as Santa Monica has – nakedly refuse to enter into long-term leases with any current or prospective airport tenant. See, e.g., Atlantic Helicopters, Inc. v. Monroe County, Florida, docket no. 16-07-12, Director’s Determination, at 31 (September 11, 2008) (“[s]ponsors must provide aeronautical businesses that meet minimum standards with the opportunity for occupancy with certainty of associated rights to conduct business for appropriate lengths of time, depending on investment requirements and associated costs”); Skydance Helicopters, Inc. v. Sedona Oak-Creek Airport Authority, docket no. 16-02-02, Director’s Determination, at 29 (March 7, 2003) (concluding that two-year lease term was insufficient, and explaining that “[p]rivate investment ... supports the operation of the nation’s airports. When an airport owner imposes unreasonable barriers to private investors, it excludes this essential
ingredient in developing a viable airport”). No specific reasons have been cited as to why any – much less all – SMO tenants have been and continue to be month-to-month tenants and denied even the theoretical opportunity for a long-term lease (e.g., more than 27 months) and on that basis the ability to have a secure future at SMO for investment and other purposes. Thus, the Policy is facially not “reasonable.”

The City proceeds to assert that it was “reasonable” for it to deny long-term leases to tenants because of the pendency of litigation regarding the duration of its obligations. The City cites no authority for this use of the word “reasonable” – which is not surprising, because there is none. The City attempts to distinguish Jim De Vries v. City of St. Clair, Missouri, docket No. 16-12-07 (Director's Determination), at 26 (May 20, 2014) (in which the FAA warned that an airport could not use “its intent and desire to close the airport” to evade its grant responsibilities) on the basis that it has asserted a legal entitlement to close the airport, which St. Clair did not. See Motion, at 14. This is a distinction without a difference; one which invokes an imaginary standard in which the filing of a legal action to close an airport would free a sponsor to act as it chooses. Moreover, the City does not explain how this novel principle should operate once a court has dismissed the action, as is the case here, or where the trial and appellate process drags on over multiple years. If the mere filing of a complaint can free an obligated sponsor to re-evaluate and “balance” its obligations, the whole notion of compliance is rendered essentially meaningless.

Simply put, although the City is free to appeal the FAA’s conclusion that it remains obligated, the City is not free in the interim to ignore its federal obligations – and the FAA is both entitled and compelled to enforce those obligations. The City cannot comply with

11 See also McDonough Properties, LLC, et al., v. City of Wetumpka, Alabama, docket no. 16-12-11, Final Agency Decision and Order, at 21 (January 15, 2015) (ten-year lease offered to tenants after sponsor’s plan to relocate airport – consistent with FAA requirements – had been abandoned).

12 In its Motion, at 14 (and elsewhere therein), the City looks to the FAA’s statement in Santa Monica Airport Association v. City of Santa Monica, docket no. 16-99-21, Director’s Determination, at 19 (November 22, 2000), aff’d Final Agency Action (February 4, 2003), that it could be “unreasonable” for the FAA to require the City to enter into a lease beyond July 1, 2015, premised on the notion that the City’s obligation to operate SMO expired on that date. But as a factual matter, that decision predated the 2003 modification of the City’s AIP grants – which in turn extended the City’s obligations through 2023, as the FAA has ruled – and in its text addressed only grant-based obligations and not the obligations of the surplus property deed. So despite the frequent out-of-context citation of this passage by the City, it simply is inappropriate and not relevant. See City of Santa Monica v. United States, 2014 WL 1348499, *5 (February 13, 2014).

13 The City also misleadingly suggests that if Pompano Beach, Florida had asserted a legal right to close its airport, for that reason alone it would have been entitled to offer only short-term leases to its aeronautical tenants. That is not an accurate representation of the FAA’s holding in docket no. 16-00-14.

14 Additionally, as the FAA is aware, the City’s obligation to operate SMO without granting exclusive rights (including the constructive exclusive rights that would be the product of unjust discrimination) remains in effect so long as SMO is operated as an airport, pursuant to 49 U.S.C. § 40103(e), and thus requires that the Policy be compliant irrespective of any pending litigation.
the obligations at issue in this case by doing only what it deems “reasonable”; it must comply with its obligations by complying with them, full stop. The City’s self-created and self-interested “compromise” is no basis for a motion to dismiss. See Skydive Monroe, Inc. v. City of Monroe, Georgia, no. 16-06-02, Director’s Determination, at 16 (March 30, 2007) (“pending litigation does not give an airport the right to deny access to a viable aeronautical operator”); United States v. City of Santa Monica, 330 Fed. App. 124 (9th Cir. May 8, 2009) (upholding FAA order requiring Santa Monica to comply with agency’s interpretation of grant assurances while Part 16 proceeding regarding those obligations was in progress).

Conclusion

The Complaint in this matter begins with a lengthy review of the history of the City’s efforts to close or restrict SMO. Although dismissed by the City as irrelevant (see Motion, at 6), the City’s conduct and undisputed intentions, extending unaltered over nearly four decades, could not in fact be more relevant to the FAA’s assessment of the City’s actions with respect to Airport finances; with respect to its lack of compliance with its federal obligations; with its purported “balancing” of those obligations against its own assessment of their existence; and, most importantly, with the likelihood that the City will comply in the future with obligations it deems unenforceable or malleable.

For the reasons set forth above, Respondent’s motion to dismiss should be denied; Respondent should be required to file an answer to the Complaint; and the FAA should proceed to adjudicate this case promptly, given the significant consequences of the issues for Airport tenants and users – and nationwide consequences of the City continuing to “thumb its nose” at its federal obligations, which can only serve to break down the safety and efficiency of the national transportation infrastructure and may potentially encourage other airport sponsors to engage in similar misconduct.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day caused the foregoing complaint to be served on the following persons by first-class mail with a courtesy copy by electronic mail:

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Dated this 22nd day of April, 2016.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF SANTA MONICA,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION,
and MICHAEL P. HUERTA, in his official capacity as Administrator of the
Federal Aviation Administration,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of California,
Hon. John F. Walter (Case No. CV 13-8046-JFW (VBKx))

BRIEF FOR AMICI CURIAE AIRCRAFT OWNERS AND PILOTS
ASSOCIATION AND NATIONAL BUSINESS AVIATION ASSOCIATION
IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE OF
THE DISTRICT COURT

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RULE 29(c)(1)
DISCLOSURE STATEMENT

The Aircraft Owners and Pilots Association ("AOPA") is a national not-for-profit membership association incorporated under the laws of New Jersey and headquartered in Frederick, Maryland. AOPA is the world’s largest general aviation member association, representing pilots and aviation enthusiasts alike. A primary purpose of AOPA is to promote, protect, and represent the interests of its members. AOPA does not have any parent corporation. As a non-profit association, AOPA does not have any stock and therefore no corporation owns any AOPA stock.

The National Business Aviation Association ("NBAA") is a national not-for-profit membership association incorporated under the laws of and headquartered in Washington, DC. NBAA is the leading voice for companies that operate general aviation aircraft in support of their business or are otherwise involved in business aviation. A primary purpose of NBAA is to promote, protect, and represent the interests of its members. NBAA does not have any parent corporation. As a non-profit association, NBAA does not have any stock and therefore no corporation owns any NBAA stock.
AOPA and NBAA are trade associations that represent the interests of persons and companies that operate aircraft. AOPA is an independent, not-for-profit education and advocacy association incorporated under the laws of New Jersey and headquartered in Frederick, Maryland. AOPA is the world’s largest general aviation member association, representing pilots and aviation enthusiasts alike. A primary purpose of AOPA is to promote, protect, and represent the interests of its members. NBAA is an independent, not-for-profit education and advocacy association incorporated under the laws of and headquartered in Washington, D.C. NBAA is the leading voice for companies that operate general aviation aircraft in support of their business or are otherwise involved in business aviation. A primary purpose of NBAA is to promote, protect, and represent the interests of its members.

The members of both associations operate general aviation aircraft, which account for approximately two-thirds of the aircraft hours flown in the national airspace system. As airport users, AOPA’s and NBAA’s members share an interest in preserving access to the nation’s public-use airports, particularly those, such as Santa Monica Municipal Airport (“SMO”), that were transferred to localities by the Federal government under the Surplus Property Act of 1944, Pub. L. no. 457, 58 Stat. 765, as amended Pub. L. no. 289, 61 Stat. 678 (1947) (“SPA”). AOPA and
NBAA also are interested in preserving the Federal government’s role, policies, and law in maintaining and developing a safe, efficient and integrated national transportation infrastructure – which is, in significant part, dependent on continued access to public-use and reliever airports such as SMO. See 49 U.S.C. §§ 40103, 47101, and 47103. The outcome of this case could undermine the national air transportation system by allowing localities to unilaterally renounce their surplus property obligations and piece-by-piece disassemble that system, harming the interests of not just AOPA and NBAA members but of the citizens of the United States generally. AOPA and NBAA can offer a practical perspective as to the importance of the Federal government’s role and responsibility to manage the accessibility of individual airports in planning for national transportation needs and the importance of those airports to the national airport system.

While AOPA and NBAA are thus concerned with the implications of this case for this particular airport, AOPA and NBAA are also concerned with the broader implications of this case to other airports on a national level. Specifically, many other general aviation airports were transferred pursuant to the SPA and/or have received Airport Improvement Program (“AIP”) grants pursuant to 49 U.S.C. § 47104, et seq. Any decision in this case may set a precedent for other airports in regard to their obligations to adhere to restrictions and covenants agreed upon with the Federal Aviation Administration (“FAA”), including the obligation to continue
to be an integral part of the national aviation transportation system. AOPA and NBAA accordingly seek to assist the Court by addressing the underlying issues – including the merits and implications of the legal arguments made on appeal – and the broader ramifications of any disposition the Court may make in this case, so that the Court may be fully informed and that any decision in this case would not have unintended adverse consequences on future matters.

The parties – appellant City of Santa Monica (“City”) and appellees the United States of America, the Federal Aviation Administration, and Michael Huerta – have informed Amici that they do not oppose the filing of this brief, and thus this brief may be filed without motion pursuant to Federal Rule of Appellate Procedure 29(a).
RULE 29(c)(5) STATEMENT

This brief was in whole authored by counsel to the Amici. No party or party’s counsel – or person other than Amici, their members, and counsel – has contributed money that was intended to fund preparing or submitting this brief.
ARGUMENT

I. THE HISTORY AND PURPOSE OF THE SURPLUS PROPERTY ACT ARE RELEVANT TO UNDERSTANDING THE ISSUES BEFORE THE COURT AND THE POTENTIAL IMPLICATIONS SHOULD BE CONSIDERED.

A. The Surplus Property Act

This case presents issues related to the execution of an instrument pursuant to a Federal statute that came into effect more than 70 years ago. Since that time, the intent of both the underlying law and the transaction now before the Court have been consistent – the public requires a national transportation system that is safe, efficient, and effective. For that reason and upon assurance that they would remain devoted to that purpose, SMO and numerous other airports were transferred to local control. The City now is attempting to undermine the public’s interest in the national transportation system. Restrictions on operations at or the outright closure of SMO – the potential results of an outcome in the City’s favor in this case – would entirely contradict the purpose of the SPA and the underlying transfer at issue.

During World War II, Congress enacted the Surplus Property Act of 1944 to provide a comprehensive system for the disposal of facilities no longer needed by the U.S. to serve the public interest. In accordance with that purpose, the SPA stated an intent “to dispose of surplus Government-owned transportation facilities
and equipment in such manner as to promote an adequate and economical national transportation system.” 58 Stat. 765, 766, § 2(s).

The importance of planning for a *national* transportation system in the surplus property disposal process was reiterated in regulations issued under the SPA. The disposal of surplus airport property, in particular, was to be performed in such a manner as to “encourage and foster the development of civil aviation and provide and preserve for civil aviation … a strong, efficient, and properly maintained nationwide system of public airports.” War Assets Administration (“WAA”) Regulation 16, 32 C.F.R. § 8316.3, 10 Fed. Reg. 14204, 14204 (Nov. 17, 1945), recodified at 32 C.F.R. § 8305.3(e), 12 Fed. Reg. 2028, 2030 (Mar. 27, 1947). Benefits to the public and the nation were the principal considerations in disposing of surplus airport property. *Id.* Furthermore, these objectives were consistent with the recommendations of the then-Civil Aeronautics Administration’s (“CAA”) 1944 *National Airport Plan* (an ancestor of the FAA’s current National Plan of Integrated Airport Systems (“NPIAS”)), which emphasized that the “growth of both private and commercial flying depends on the development of airports, and that our present airport system is not adequate to serve the needs of aviation.” House Doc. No. 807, 78th Cong., 2d Sess., at 1 (Nov. 28, 1944), *available in* CIS U.S. Serial Set no. 10879, Fiche 15-16. Thus, airports that were considered valuable to the maintenance of “an adequate and economical
national transportation system” could be transferred to local governments, but only in consideration of the acceptance of reservations, restrictions, and conditions of the Federal government. See WAA Regulation 16, 32 C.F.R. §§ 8316.3 and 8316.18, 10 Fed. Reg. 14204, 14204 and 14207.

To implement these goals, Congress placed firm limits on the subsequent use of airport property for other than airport purposes, and “sought to provide the FAA with prospective oversight powers in furtherance of specific statutory purposes.” Montara Water and Sanitary District v. County of San Mateo, 598 F. Supp.2d 1070, 1089 (N.D.Cal. 2009). Transfers of airport property – specifically airports transferred for the value of the land and/or improvements made by the Government – contained restrictive covenants requiring the transferee to use the airport for public airport purposes. WAA Regulation 16, § 8316.10(a)(2), 10 Fed. Reg. 14204, 14205. The purpose of such restrictions was to “ensure that ‘every acre of a surplus airport is held in trust for a specific purpose and usage.’” Montara, 598 F. Supp.2d at 1087 (quoting FAA Order 5190.6A, ¶ 4-18(b) (Oct. 2, 1989)). In other words, the SPA specified that surplus airport property be disposed of in such a manner so as to ensure that the property remained airports as needed for an efficient national transportation system, under the oversight of the Federal government and that airport property not be misallocated by transferees for other purposes. See FAA Order 5190.6B, ¶ 23.17(a) (Sept. 30, 2009) (see ER112) (case
study of airport in which “mismanagement by the sponsor – including illegal disposal of the airport’s assets – and restricted access resulted in [reversion] action by the federal government”).

In this case, it appears that the City’s efforts to quiet title to the SMO property could have the ulterior purpose of restricting or closing SMO once its commitments to the Federal government pursuant to AIP grants and the 1984 Settlement Agreement have ended, an action that would entirely contradict both the overt purposes of the SPA and the transfers made pursuant to that law. Congress specifically intended that recipients of surplus airport property post-World War II maintain such property under express and relatively simple terms that allow for the preservation, maintenance, and improvement of the national air transportation system – *i.e.*, predicated on an explicit Federal right of reversion. Those terms cannot be avoided at a later date unless the recipient requests an exception from the FAA and a conscious determination is made by the FAA to allow such an exception, based upon the public interest. See 49 U.S.C. § 47151, *et seq.* (which re-codifies relevant provisions of the SPA); 14 C.F.R. Part 155. Santa Monica has not yet submitted such a request to the FAA, but the City’s intent in this regard seems obvious, and given the importance of SMO to the national air transportation system, it appears highly unlikely that such an exception would be allowed as it would manifestly not be in the public interest.
B. Potential Adverse Implications to Air Traffic in the Southern California Region and the National Airspace System

The potential fate of SMO itself is not all that is at stake in this case. The closure of SMO, or restricted access to SMO, would have a detrimental effect on air traffic in the Southern California region and the national airspace system, which in turn would detrimentally impact the members of both associations and the public as a whole.

SMO is part of a “geographic area covering several airports, serving major metropolitan areas and a diversity of aviation stakeholders,” often called the “SoCal Metroplex.” See Optimization of Airspace & Procedures in the Metroplex, www.faa.gov/air_traffic/flight_info/aeronav/procedures/oapm. In planning for the SoCal Metroplex area, the FAA is attempting to:

provide[] solutions on a regional scale, rather than focus[] on a single airport or set of procedures. The optimization plan takes into account all airports and airspace that support each metropolitan area as well as how traffic in those areas interacts with other metropoleses. It considers a myriad of factors including safety, efficiency, capacity, access and environmental impact.

Id. SMO cannot be considered as a single airport, but rather must be viewed according to its role as an integral piece of the nationwide network of airports. Any modification or cessation of operations at this airport would have wide-ranging ramifications felt in not only the surrounding metropolitan area, but that also could
affect the “safety, efficiency, capacity, access and environmental impact” of airport operations nationwide. \textit{Id.}

There already is limited airport capacity in the Los Angeles basin. For this reason, in 2009, the FAA rejected an application to impose a nighttime curfew on operations at nearby Bob Hope Airport (BUR). The FAA stated that “[t]he southern California airspace is currently highly congested and complex” and “[a] curfew at BUR would worsen congestion elsewhere”; thus restrictions at BUR would be inconsistent with the “safe and efficient use of the navigable airspace.” \textit{FAA Letter of Decision on Burbank-Glendale-Pasadena Airport Authority Application for a Full Nighttime Curfew,} at 31, 35 (Oct. 30, 2009), available at www.faa.gov/airports/environmental/airport_noise/part_161/media/burbank_10_30_09.pdf. \textit{See also In the Matter of Compliance by the City of Santa Monica, California,} no. 16-02-08, Director’s Determination, at 51 (May 27, 2008), available at part16.airports.faa.gov/pdf/16-02-08b.pdf (“the Los Angeles region is one of the most congested air traffic control areas in the country”); \textit{U.S. v. City of Santa Monica,} 330 Fed Appx. 124, 126 (9th Cir. 2009) (noting “potential disturbance to air traffic around the Los Angeles area” if the City was allowed to ban certain categories of aircraft from operating at SMO).

Awarding the City unfettered discretion to impose restrictions or potentially even \textit{close} the Santa Monica Municipal Airport would doubtless have a similar or
even more dramatic effect on air traffic in Southern California. The operations currently being handled at SMO would necessarily move to other airports in the Los Angeles basin, affecting established routes and procedures at (as well as shifting environmental impacts to) other airports – many of which already operate at or near capacity. Notably, according to judicially-noticeable records of airport traffic posted by the City, in 2012-13 there were on average nearly 100,000 annual aircraft operations (i.e., arrivals and departures) at SMO – more than 270 per day, with the airport serving as a significant reliever for general aviation traffic that might otherwise seek to utilize the already-congested Los Angeles International Airport or other bustling Southern California airports.\(^1\) Table 1, infra, provides a summary of the overall air traffic in the Los Angeles basin, based on FAA data, underscoring SMO’s importance to its neighboring airports as a reliever in this dense, busy area.

\(^1\) See www.smgov.net/Departments/Airport/Operational_Data.aspx. The data currently available for 2014 is incomplete and thus not included in the table. However, the 2014 data that is available indicates a similar trend in the number of operations.
Clearly, the finite availability of airspace and the limited airport capacity existing in a region with a small number of public use airports to accommodate already congested operations would be impacted if operations at SMO were restricted or eliminated, causing greater congestion and burden to the system. The reverberations of any limitations or cessation of flights at SMO would be felt across the United States; could interfere with the FAA’s mission in ensuring a safe and efficient transportation system; and would not be in the public interest.

Further, any decision in this case could set a precedent with wide-ranging implications. Out of the approximately 5,000 public-use airports in the United
States – and the approximately 2,800 of those that are considered to be general aviation and reliever airports for NPIAS purposes – there may be more than 200 airports that have executed surplus property transfer agreements that are similar to the agreement that is at issue in this case. If the City’s argument regarding the timeliness of its complaint challenging the effectiveness of a transfer executed in the 1940s is found to be valid, the consequence could be to open up an opportunity for the owners of hundreds of other public-use airports to consider the diminution or elimination of their operations, potentially leading to the substantial crippling of the nation’s air transportation infrastructure.

The conditions of the 1948 Instrument of Transfer are clear, and repeatedly have been acknowledged by Santa Monica. Thus the City’s claim of ignorance at this late date about the effect of the plain and recognized language at issue amounts to a transparent and parochial effort to selfishly achieve a City objective without regard to how it would effectively weaken the national air transportation system that has been planned, established, and nurtured to serve the nation’s public.

II. THE CITY WAS AWARE OF THE FAA’S INTERPRETATION OF THE 1948 INSTRUMENT OF TRANSFER MORE THAN TWELVE YEARS AGO, AND AS A RESULT ITS QUIET TITLE ACT CLAIM IS TIME-BARRED.

On appeal, the City does not dispute that there is a twelve-year statute of limitations for it to bring a claim pursuant to the Quiet Title Act, 28 U.S.C. § 2409a (“QTA”), regarding the title to SMO (i.e., whether the Federal government
may revert the real property that comprises the Airport if that property is no longer used for aeronautical purposes). Rather, the City contends that it was not aware until 2008 that the Federal government interpreted the 1948 Instrument of Transfer to encompass an ongoing Federal interest in the real property that comprises SMO, and thus that its October 31, 2013 complaint in this case was timely.\(^2\)

The District Court appropriately rejected that contention, finding that the City knew or should have known of the interest claimed by the government. In addition to the statements cited by Appellees,\(^3\) there is further testimony that we believe may help the Court to fully understand the extent of the City’s knowledge. Amici therefore request that this Court take judicial notice of testimony provided under oath in 2001 and 2003 by Stephen Stark, a former Assistant City Attorney

\(^2\) As an aside, the City states that certain parcels that now comprise SMO were not encompassed by the 1948 Instrument of Transfer, and are not at issue in this case. See Appellant’s Brief at 4 n.1. However, Amici understand that certain obligations created by the 1948 Instrument of Transfer extend to all parcels that now comprise SMO, irrespective of how they were transferred to the City. Because this issue has not been briefed and is not necessary to the resolution of this appeal, Amici ask that the Court not make any rulings that would prejudice its consideration in the future.

\(^3\) For decades, the Federal government’s deliberations – and indeed, City and California deliberations also – on matters related to SMO have been guided by the knowledge of and reliance upon the obligations that have governed the airport, including that the City must continue to operate SMO upon condition of reversion. See Appellees’ Brief at 17-18. Notably, it was upon such basis that the Federal government originally agreed to relinquish its interest in the airport property in 1948 – including the significant improvements made by the Federal government during World War II. See, e.g., Appellees’ Brief, at 6-7.
for the City of Santa Monica, as a witness for the City of Santa Monica. See Exhibits A and B. It is well-established that this Court may take judicial notice of relevant materials from other tribunals. See, e.g., Biggs v. Terhune, 334 F.3d 910, 915 n.3 (9th Cir. 2003); U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992); Winfrey v. McDaniel, 487 Fed. Appx. 331, 332 n.3 (9th Cir. 2012). In this case, the proffered transcripts are highly relevant because they further establish that the City in fact was aware of the Federal government’s interpretation of the 1948 Instrument of Transfer more than twelve years before the complaint was filed, and thus that Santa Monica’s QTA claim is untimely.

In particular, in 2001 Stark – who testified that he had been intimately involved in SMO matters during his tenure as an Assistant City Attorney for Santa Monica (1978-85) and Acting City Attorney (1980-81) – was questioned about his understanding, as of 1981, of the reversion language included in the 1948 Instrument of Transfer. Specifically, Stark was asked: “[B]asically if the city ever in perpetuity ever tries to convert any of this property to any other use, then the federal government gets it back, or can operate to get it back at that time?” Exhibit A, at 35. Stark responded: “I think that’s a reasonable plane [sic] English statement of what that purports to say.” Id. Stark also was asked if that understanding was
changed by the 1984 Settlement Agreement. Stark responded: “I don’t think so. . . .

[T]he answer to your question is the problem is not going away.” *Id.* at 36.

In 2003 testimony, Stark was again asked about the 1948 Instrument of Transfer: “[T]his deed of transfer imposed a covenant and restriction that ran with the land, that the land subject to this deed be used as an airport in perpetuity; correct?” Exhibit B, at 337. Stark responded:

I understand that’s what it said. I also further understand that there was some controversy on the part of the City as to whether it covered to maintain the airport for airport purposes and perpetuity was enforceable. That was a matter of some discussions between us and the Federal government from time to time.

*Id.*

In other words, even though the City may not have agreed with the Federal government’s interpretation of the reversion language in the 1948 Instrument of Transfer, the City has been aware of that interpretation since at least the early 1980s. Indeed, Stark’s September 12, 2001 testimony – in the presence of Deputy City Attorney Martin Tachiki – itself was put on the record more than twelve years before this case was filed, and at a bare minimum should be construed to have triggered the running of the statute of limitations for a QTA claim. Moreover, Stark’s testimony also shows that the City did not believe that, via the 1984 Settlement Agreement – an agreement of which Stark was a primary drafter, see Exhibit B at 325 – the Federal government had abandoned its interpretation of the
reversion language in the 1948 Instrument of Transfer (an issue which is further discussed in the next section of this brief).

In circumstances such as this, where there is clear evidence that the City was aware of the Government’s interpretation that the property must remain open as an airport or it would be subject to Federal reversion, any attempt to litigate the claimed Federal interest in the airport property is now time barred. To hold otherwise would not only run contrary to established law but would establish precedent that could have far-reaching consequences. Accordingly, the judgment of the District Court should be affirmed.

III. THE 1984 SETTLEMENT AGREEMENT WAS NOT INTENDED TO RELEASE THE CITY FROM THE OBLIGATIONS OF THE 1948 INSTRUMENT OF TRANSFER; THIS ASSERTION WAS NOT RAISED BELOW AND PREVIOUSLY HAS BEEN REJECTED BY THE FAA.

In its appeal, the City repeatedly asserts, for the first time in the context of this case, that the terms of the 1984 Settlement Agreement specifically released it from the obligations of the 1948 Instrument of Transfer. See, e.g., Appellant’s Brief, at 51. However, that agreement was narrow in scope and only reached the subject of then-existing litigation, not the 1948 Instrument of Transfer, and only released specified parcels from Federal obligations.

First, although the 1984 Settlement Agreement was cited in the proceedings below, this specific argument was not raised by the City in response to the Federal
government’s motion to dismiss and was not raised or ruled upon by the District Court. Thus, it cannot now be raised for this Court’s review. It has been waived.

*State of Ariz. v. Components, Inc.*, 66 F.3d 213, 217 (9th Cir. 1995).

Second, the City’s argument is, in any event, contrary to the explicit terms of the agreement and instead relies upon out-of-context quotations from the 1984 Settlement Agreement. To the extent that the agreement resolved “existing legal disputes” between the City and the Federal government, it was explicitly clarified by the very next sentence of § 4 thereof (*see* ER369-70) to be applicable “to all existing litigation and/or administrative complaints pending between the parties.” Neither the reversion condition nor any other component of the 1948 Instrument of Transfer was identified in the 1984 Settlement Agreement as being the subject of

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4 As an aside, in arguments made about the 1984 Settlement Agreement the City refers to a FAA Director’s Determination for the proposition that the City’s last AIP grant agreement expired in 2014. *See* Appellant’s Brief at 21-22 (*citing Santa Monica Airport Association v. City of Santa Monica*, no. 16-99-21, Director’s Determination, at 22-23 (November 22, 2000), available at part16.airports.faa.gov/pdf/16-99-21b.pdf). But that docket predated a 2003 amendment to one of the City’s AIP grants. Although the City now asserts that the 20-year obligation period of AIP grants runs from the date of a grant’s *execution*, *see* Appellant’s Brief at 16, that is a contested issue. The FAA previously has opined that the 20-year period runs from the last *amendment*, *see In the Matter of Compliance Obligations by the City of Santa Monica, California*, no. 16-02-08, Director’s Determination, at 13 – and a pending FAA Part 16 complaint to which AOPA and NBAA are parties (nos. 16-14-04/16-14-05) seeks definitive resolution of that very issue. Because this issue has not been briefed and is not necessary to the resolution of this appeal, Amici ask that the Court not make any rulings that would prejudice its consideration in the future.
litigation or an administrative complaint between the parties at that time – nor has Santa Monica done so now. Indeed, as stated above, Santa Monica has asserted that it was not even aware of the FAA’s interpretation of the 1948 Instrument of Transfer prior to 2008. Although this assertion is incorrect (as discussed in the prior section of this brief), their contention effectively constitutes a concession that from the City’s perspective any dispute over the reversion condition could not have been released by § 4 of the 1984 Settlement Agreement.

To the extent that the City also looks, see Appellant’s Brief at 51, to § 6 of the 1984 Settlement Agreement (which included a release from the 1948 Instrument of Transfer for “parkland and residual land,” see ER371), that release clearly was applicable to a subset of property at the airport, not the airport as a whole – consistent with the discussions of residual land and parks in § 2 and § 5 of the agreement. See ER369-70. See also Santa Monica Airport Association, no. 16-99-21, Director’s Determination, at 22 (noting that only “parkland and residual land” had been released), Final Decision and Order, at 22 n.12 (February 4, 2003), available at part16.airports.faa.gov/pdf/16-99-21.pdf (likewise).

The City also has acknowledged that § 3 of the 1984 Settlement Agreement (see ER369) provided that prior agreements regarding SMO should be interpreted consistently with that agreement. See Appellant’s Brief at 51. That language would be devoid of meaning if the 1984 Settlement Agreement were interpreted to have
released the City from all prior obligations, such as the 1948 Instrument of Transfer. As this Court knows, a basic canon of contractual interpretation is that “one provision should not be interpreted in a way which is internally contradictory or that renders other provisions … inconsistent or meaningless.” Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission, 366 F.3d 692, 700 (9th Cir. 2004) (citations and internal quotation marks omitted). This is a further reason that the City’s proposed reading of the 1984 Settlement Agreement cannot stand.5

Finally, in a prior administrative proceeding concerning SMO, the FAA squarely rejected the entire line of argument now asserted by Santa Monica:

[T]he City contends … that the FAA in executing the 1984 Agreement, released the City from the “conditions, covenants, and restrictions imposed by the Instrument of Transfer dated August 10, 1948, Deed No. 4 (CCS),[”] and allowed “use of land designated as parkland and residual land therein for other than airport and aviation purposes.” … The Director finds that this argument lacks merit. The 1984 Agreement, agreed to by the City, only evidences release of some airport land covered by the Surplus Property Act, specifically certain residual land to be used for non-aeronautical uses, but not remaining aeronautical use property. … The 1984 Agreement … did not result in a release of Federal obligations permitting the City to close the Airport.

5 Nor is it inconsistent with anything in the 1984 Settlement Agreement that other obligations entered into by the City require SMO to be operated as an airport for different periods of time – but that is not an issue presently before this Court.
In the Matter of Compliance Obligations by the City of Santa Monica, California, no. 16-02-08, Director’s Determination, at 60. See also Bombardier Aerospace Corp. v. City of Santa Monica, no. 16-03-11, Director’s Determination, at 2 (January 3, 2005), available at part16.airports.faa.gov/pdf/16-03-11b.pdf (finding obligations in 1948 Instrument of Transfer applicable to SMO; the City did not argue that the instrument had been released by the 1984 Settlement Agreement – nor did the City appeal, which rendered the decision final pursuant to 14 C.F.R. § 16.33(h)). In sum, the FAA has made clear – and the City has accepted – that the 1984 Settlement Agreement does not serve as a blanket release of the 1984 Instrument of Transfer.

The City should not be permitted to misconstrue agreements into which it knowingly entered, with a full understanding of the implications, at a later time when it no longer likes the consequences. The City’s assertions in this regard completely undermine the intent and purpose of the 1948 Instrument of Transfer and the SPA under which it was executed, to wit ensuring that the citizens of the United States have a safe and efficient national air transportation system to meet their needs. Nothing in the 1984 Settlement Agreement changes the fact that the

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6 The FAA subsequently issued a final administrative decision that was not premised on the obligations contained in the 1948 Instrument of Transfer and thus did not address this issue; the final administrative decision was affirmed in City of Santa Monica v. FAA, 631 F.3d 550 (D.C.Cir. 2011).
airport property is subject to Federal reversion if the City ever ceased to operate it as an airport, or alters the City’s agreement pursuant to the 1948 Instrument of Transfer to operate the property as an airport in perpetuity.

**CONCLUSION**

For the reasons stated, Amici respectfully request that this Court affirm the decision of the District Court in favor of the Defendants-Appellees.

Dated: January 22, 2015

Respectfully submitted,

_____________________________________/s/

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RULE 32(a) CERTIFICATE OF COMPLIANCE

I certify that this brief contains 4,901 words, excluding parts exempted by Federal Rule of Appellate Procedure 32(a)(7)(B), according to a count by Microsoft Word, and has been prepared in 14-point Times New Roman, a proportionally-spaced font, and therefore complies with the limits set forth at Federal Rule of Appellate Procedure 32(a)(5), 32(a)(6), and 32(a)(7)(B)(i) as modified by Federal Rule of Appellate Procedure 29(d) for amicus parties.

/s/ __________________________
Kathleen A. Yodice
CERTIFICATE OF SERVICE

I certify that this on January 22, 2015, I electronically filed the foregoing brief with the Clerk of this Court using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ _____________________________
Kathleen A. Yodice
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST W  HON. JAMES A. ALBRACHT, JUDGE

ALICE J. COLE, et al.,
    Plaintiff,

VS.

CITY OF SANTA MONICA, et al.,
    Defendant.

Case No. SC055183

REPORTER'S TRANSCRIPT
SEPTEMBER 12, 2001
TESTIMONY OF STEPHEN SHANE STARK

APPEARANCES:

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APRIL ADAMS, CSR 2824
OFFICIAL REPORTER
THE COURT: Okay we are ready to begin. All parties are present. I believe the defense is going to call another witness out of order.

THE WITNESS: May I affirm.

THE COURT: Yes.

STEPHEN SHANE STARK

Called as a witness for the defense, affirmed and testified as follows:

THE CLERK: You do affirm that the testimony you are about to give in the matter now pending before this court shall be the truth, the whole truth, and nothing but the truth.

THE WITNESS: Yes.

THE CLERK: State your name for the record.

DIRECT EXAMINATION

BY MR. TACHIKI:

Q. Who do you currently work for?
A. For the County of Santa Barbara, County Counsel.

Q. How long have you been County Counsel there?
A. Since May 1994.

Q. Prior to working for the county of Santa Barbara were you employed by the city of Santa Monica?
A. Yes, I was.

Q. What position did you hold?
A. I was assistant city attorney. My employment there was between April of 1978 and December of 1985. For all of that time I was assistant city attorney except for the period of time between May of 1980 and April of 1981 when I was acting city attorney.

Q. When you started working for the city were you assigned to litigation regarding the Santa Monica Airport?
A. Yes, I was. I was assigned to participate in the city's defense of a case which was known as the Santa Monica Airport Association versus the City of Santa Monica.

Q. Were there other plaintiff's in the
case?
A. I'm trying to remember.
Q. Were there some national aviation interests?
A. They intervened. At some point in that litigation the National Business Aircraft Association and the General Aviation Manufacturers Association intervened in the case. Initially I think was just the airport association.
Q. Those are national aviation groups?
A. Yes. The one is composed of companies that, at the time one was composed of companies that used corporate aircraft in their business, and the manufacturer's association was composed of people that made general aviation aircraft, and parts as well.
THE COURT: For your purposes, when he said someone else intervened it essentially means that a lawsuit was initiated between parties A and B, and another party being aware said we have legitimate interests in this also, and they intervened. If they have legitimate interests they can intervene and make themselves part of the case. Originally filed by somebody else and other parties intervened.
Q. BY MR. TACHI: Were you one of the attorneys representing the city in the trial of this matter?
A. Yes, I was.

Q. And would you tell us what the action was about? What were the issues?

A. The primary issues in this case -- I will try not to lapse into lawyerese.

The action challenged five ordinances that the City of Santa Monica had adopted in order to abate noise at its airport, the Santa Monica Municipal Airport.

The ordinances included a ban on jet aircraft, a single event noise limit of 100 decibels, which basically is the amount of noise that an aircraft could lawfully make at a certain point when it left the airport. A curfew, night curfew on departures. I believe there was a ban on helicopter pattern flying, and a limit on touch and goes. Touch and go being an exercise that pilots use when they train. They land and immediately take off again.

Those five ordinances were challenged on the grounds that they interfered with interstate commerce, and I think at least in some cases that they violated the equal protection clause.

Q. In front of you there is a stack of papers. Can you look at the first one, exhibit 344, ordinance number 996.

A. I see it.

Q. And on page two, section one.
A. Yes, I see it.

Q. Do you see what the title of the section is?

A. Jet aircraft prohibited.

Q. Is that the jet ban section that was challenged in U.S. District Court?

A. This is the ordinance that was challenged, and this is the guts of the ordinance that was challenged making it unlawful for people to take off and land at the airport with jet aircraft.

Q. Following the trial in this matter, what was the court's decision with regard to the jet ban?

A. The court's decision, if I recall correctly, was that the jet ban was invalid because it violated, --

Q. Just the decision.

A. The court enjoined the jet ban and upheld the other four ordinances.

Q. Do you remember when the district court made that decision?

A. There was an oral decision. Judge Irving hill, now deceased, gave an oral decision I think in April 1979.

It took a couple of months for him to actually reduce the decision, which he read from the bench, to writing it, having a final order. I
think it was in September. I could tell you if I had the decision in front of me.

Q. I think that's correct.

That decision, he permanently enjoined the jet ban?

A. Yes, he did. Enjoined the enforcement of it.

Q. Now, do you remember at that time if there were any signs on the east side of the airport? I'm talking about this location here.

A. Yes. Before Judge Hill issued his ruling invalidating the jet ban, there was a large sign, I think where the runway going east took off, "no jets". A big sign, you couldn't miss it. Driving on Bundy it said "no jets."

Q. After the district court's decision, was that sign removed?

A. Yes.

Q. Do you remember when it was removed?

A. Within a couple months, I believe I do.

Q. Your best approximation?

A. The sign was removed in, I believe May or June of 1980.

Q. And was that sign replaced?

A. Yes, it was.

Q. And what did the new sign say?

A. "Please fly quietly."

Q. Do you recall there ever being a sign
on the hill listing the hours of the airport was in operation?
   A. I don't recall any, no. There may have been, but I don't recall.
   Q. The district court opinion, was that appealed?
   A. Yes, it was.
   Q. And again without getting into the basis for the decision, what did the Court of Appeal do?
   A. The Court of Appeal affirmed, let stand, agreed with Judge Hill's decision invalidating the jet ban and upholding the other four ordinances.
   Q. Do you remember approximately when that occurred?
   A. I believe it was in 1981. I don't recall the exact month. It took a couple years for it to be decided by the Ninth Circuit on appeal.
   Q. Again, after the district court enjoined the jet ban ordinance, did the City of Santa Monica adopt a new noise standard?
   A. Yes.
   A. I'm looking at it.
   Q. Can you look at page 7, Section 8.
Q. Is that the section that set the new noise limit at the airport?
A. Yes.
Q. And what noise limit did that ordinance set?
A. The maximum permissible SENEL, single event noise exposure level, shall be 85 decibels.
Q. Was that ordinance challenged in court?
A. Yes.
Q. Do you recall who challenged it?
A. Yes, I believe the plaintiffs in that case were Gunnell Aviation. Gunnell ran a business, or fixed base operation, at the airport, and I believe the National Business Aviation Association. I don't recall whether General Aviation Manufacturers challenged it or not. I recall one of the national groups challenged it and I don't believe the Santa Monica Airport Association was a plaintiff in that case.
Q. Do you recall when the second lawsuit was filed?
A. It was filed virtually within weeks if not days of the adoption of the ordinance. The ordinance was subject to a preliminary injunction before it became effective, which would have been a month after it was adopted. It was challenged
right after it was passed.

Q. And did this case ever go to final judgment?
A. This case was settled and dismissed.
Q. So the only injunction issued was a preliminary injunction in this matter?
A. That's correct.
Q. Now, while this, the original case the first SFA case was pending, was that when the SMA case was appealed?
A. Yes. The appeal was pending while the trial in the second case was going on. I hope that wasn't too confusing.

THE COURT: What are you referring to as the SMA case?
MR. TACHIKI: SMAA.
THE WITNESS: The first case was appealed while the trial in the second case was going on.
Q. BY MR. TACHIKI: The second case never went to trial?
A. It never went to trial.
Q. The second case. The NBAA case, that was pending through the early 1980's?
A. Yes.
THE COURT: The what case?
THE COURT: Okay.
Q.  BY MR. TACHIKI: While those actions were pending, could you look at exhibit 346 which is ordinance number 1239?
A.  Yes, I'm looking at it.
Q.  This ordinance, it's dated December 8, 1981. Do you recall why this ordinance was adopted?
A.  Yes.
Q.  Let me go back, based on the initials at the top of this page, did you draft this ordinance?
A.  Yes, I did.
Q.  And do you recall why it was written?
A.  Yes, I do.
Q.  Why was it written and adopted?
A.  The purpose of the ordinance was to ensure that we had an enforceable noise limit in place while -- if I can back up for a second.
We had appealed the first ruling. The first ruling had left the hundred decibel single event noise ordinance in place. We adopted the 85 decibel ordinance, which dropped that limit.
The judge, Judge Hill, preliminarily enjoined that ordinance. Issued an injunction. We were concerned that we, we being the city attorney and I, views shared by the City Council, were concerned that we needed an enforceable ordinance in place and that some people might construe the
adoption of the 85 decibel ordinance as superseding the hundred decibel ordinance without replacing it with anything. So we wanted to make sure there was some noise ordinance on the books. That we were relatively confident, at least pending decision on appeal, that we could enforce.

I think we also extended the night departure curfew by an hour in the same ordinance so we could get an additional level of noise abatement at that time.

Q. That ordinance, this one, 1239?
A. Yes. There were two purposes, but the major purpose was to make sure we had something on the books that we were confident we could enforce.

Q. During the 1980's while this was occurring, did the City Council adopt resolutions about the continued operation of the airport?
A. They adopted a motion. I think it was a resolution that they adopted. They certainly did adopt a resolution, I believe in June of 1981, that announced their intent to close the airport when legally feasible, pending a determination of when that would be. I think that would be a resolution.

Q. Based on this resolution and the fact that the city adopted the prior ordinances, did that cause any challenges to arise to the city?
A. As I recall it did.

Q. And do you remember who the challenges
came from?

A. Using the word challenge loosely, my recollection is that there were some airport operators, I don't recall if it was the airport association or individual operators. I believe they filed suit in state court. I think they filed an administrative complaint with the Federal Aviation Administration.

The Federal Aviation Administration raised heck with the city. I'm not sure if it was a formal complaint they initiated, but there was an administrative complaint initiated by the, with the FAA by the airport users.

Q. Did the FAA become involved then?

A. Well, the FAA was a friend of the court, they were not a party to the litigation involving the airport, but they wrote briefs and sent a lawyer to make argument and testimony before the judge, and they became more actively involved in the litigation. They didn't formally seek parties, but they intensified their efforts.

Q. Did the city start having discussions with the FAA about the future of the airport?

A. The city at some point in time, around 1981, following the expression of interest by the FAA and what we were doing, yes, we commenced discussions with the FAA about the future of the airport and a noise abatement effort.
Q. And what did these discussions end up in?

A. The end product of the discussion was something called the airport noise agreement, the airport agreement, and a comprehensive airport noise ordinance which replaced the set of ordinances.

THE COURT: Is this the 1984 agreement.

THE WITNESS: Yes.

Q. BY MR. TACHIKI: In that stack, exhibit 348?

A. I see the Santa Monica Airport agreement. That's what I'm referring to. The Santa Monica Airport agreement.

Q. Sometimes referred to as the 1984 agreement?

A. Yes, and that is exhibit 348, now that I look at the back of it.

Q. You said you had settlement discussions with the FAA. Did you also have settlement discussions with the national aviation interests, the NBAA?

A. Yes.

Q. Did you take part in the settlement discussions?

A. Yes, I did.

Q. So as part of the settlement discussions, did the city undertake planning studies
for the airport?

A. Yes, they did.

Q. And again if you look at the exhibits in front of you, look at exhibit 348 the airport master plan and exhibit 339 the environmental impact report.

A. I'm looking at them.

Q. Do you recall those as being the studies of the city?

A. They were among the studies. I think there was a prior airport plan done by somebody called the Arroyo Group, which was more of a conceptual plan. The master plan study is by CM2H Hill, which is an engineering firm, and that was a study done leading to the master plan for the airport.

The next document is the EIR, which I remember quite well, for the layout plan, being basically a map of a redesigned airport and a noise mitigation program which would include the ordinance that, the noise ordinance I just mentioned.

Q. Were these two reports done for the 1984 agreement or for the second lawsuit, the NBAA lawsuit?

A. They were done for the 1984 agreement. My recollection is that the NBAA lawsuit, the 1981 lawsuit, was dismissed after the city entered into
good faith -- dismissed without prejudice, meaning it could be brought again -- after the city signed contracts with the engineering firm to do the layout plan and with a noise consultant.

The planning process led to the dismissal of the lawsuit. The net result of the studies called for in this contract was the airport layout plan and the airport agreement with noise ordinance.

Q. Do you remember when the NBAA lawsuit was dismissed?
A. I thought it was dismissed in 1983 but I can't be sure.

Q. Go back and look at 347, ordinance 1267?
A. Yes, I have that.

Q. This ordinance also indicates an adoption of the noise limit of a hundred decibels?
A. Yes.

Q. Why was this adopted?
A. If I could peruse it for a second. It appears to be adopted about a year and a couple months after the interim limit.

Q. Was this adopted to make it a permit noise limit as opposed to an interim limit?
A. On its face it's a permit noise limit, yes. I don't know why it was adopted.

Q. This is the noise limit in effect
through the 1984 agreement at least; is that correct?

A. This ordinance was in effect until the amended comprehensive airport ordinance and the 1984 agreement. There was some technical reason why it was adopted. My recollection is it was not regarded as a substantive change, simply to carry forward the notion of the interim ordinance which in turn carried forward the hundred SENEL limit which had been upheld in the first lawsuit.

Q. At this point we have a hundred decibel limit in effect. You testified there are two studies that have been adopted.

When was the 1984 agreement entered into? Back at exhibit 348.

A. Appears to be January 31st, 1984, executed by the parties.

Q. Based on your recollection of the 1984 agreement and reading the agreement, what were the benefits the city obtained from the 1984 agreement?

A. Other than the assurance that the lawsuits would go away, the city gained the endorsement and approval of the FAA for a noise, a comprehensive noise abatement program with the implicit promise, if not the direct promise of federal funding and federal technical cooperation for the experimental part of the noise abatement program.
We gained a new airport layout plan, which had approximately, if I recall correctly, forty acres of land that was freed from the restrictions of airport use that we could use for nonaviation purposes.

Essentially we resolve our outstanding legal disputes with the FAA and the aviation community about our authority to regulate the airport. Primarily we got an agreement -- we got a lowered noise limit.

Q. What did it get lowered to?
A. The single event noise limit got lowered to 95 decibels, and in addition we got the agreement to do an experimental, I think a performance based noise limit that we would implement over time. The attempt to regulate aircraft based on their ability to fly within certain noise parameters.

Q. Were there any other things in the agreement?
A. My recollection is the FAA recognized our existing touch and go bans and helicopter bans could remain in place.

Q. Were they adopted in the city municipal code?
A. I believe so.

Q. Look at exhibit 340. Ordinance 326?
THE COURT: What was --
THE WITNESS: We also gained certain safety improvements for the airport as a result of this agreement. This was part of the deal that we agreed that we would keep the airport open until the year 2015, and they agreed that they would help us fix it up and make it safe.

Q. BY MR. TACHIKI: Have you been able to find 1326?

A. I see it.

Q. Now again, is this an ordinance you drafted?

A. Yes, I did. Not only drafted but appears to reflect I typed this myself.

Q. Is this the ordinance that basically incorporated the benefits that we, the city obtained from the 1984 agreement?

A. Yes, it is. It overhauled the airport code.

Q. Then again on the date, when was this adopted?


Q. Now, going into the 1984 agreement, what was the city's main goal in entering into the 1984 agreement?

A. The city's main goal in entering into the 1984 agreement was to ratify our powers as the proprietor of the airport to abate airport noise and set airport regulations.
Q. Did the city achieve that goal?
A. Yes.

MR. TACHIJI: Thank you Your Honor.
I have no further questions.

THE COURT: Cross.

MR. HENDERSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HENDERSON:

Q. Good morning Mr. Stark.
A. Good morning.

Q. You have been an attorney for municipal or city governments for more than thirty years?
A. That's basically correct.

Q. Started out in the District of Columbia?
A. Yes.

Q. Came to Santa Monica?
A. I taught law school in between the time, and at one time when I was moving from coast to coast I practiced law out of a van called the Law Van. That was a long time ago.

Q. Interesting stories, but if I ask a yes or no question you can answer yes or no. Then you came to Santa Monica at some point?
A. Yes.
Q. And moved on now to Santa Barbara and eventual became County Counsel?
A. Yes.
Q. When you were at the City of Santa Monica you said there was a jet ban in place?
A. That's correct.
Q. You understood that to be in large part the result of the Nestle lawsuit brought against the City of Santa Monica?
A. My understanding is there was a relationship between the dismissal of the Nestle lawsuit after it was remanded by the State Supreme Court and the adoption of the noise ordinance, including the jet ban.
Q. The jet ban in place when you first got there, it was a categorical jet ban it, wasn't it? Do you know what that is?
A. I'm not sure I know. I have an understanding of what I think it means.
Q. At the time you got there there was a hundred decibel limit on all aircraft?
A. Right.
Q. And there was a jet ban. Absolutely no jets.
A. That's correct.
Q. And so this was just an arbitrary absolute. No jets.
A. I don't know if I would characterize it
as arbitrary, but it was absolute.

Q. Whereas for all aircraft, possibly including jets, you had a noise limit?
A. That is correct.
Q. Now. You said there was a lawsuit brought first by the Santa Monica Airport Association?
A. Yes.
Q. SMAA?
A. Yes.
Q. And they were joined in by these national aircraft interests, the people who build the business jets and things like that?
A. Yes.
Q. And they were attacking, I think you listed five elements they were attacking?
A. All of them were attacking the same thing. All five ordinances, yes.
Q. And one was this absolute ban on jets?
A. Yes.
Q. And I think they also were attacking this?
A. Yes.
Q. And the others related to helicopter and touch and go?
A. They attacked them all.
Q. And the nighttime curfew?
A. Yes.
Q. Now, so it went to court, right?
District Court, Federal District Court in 1979; is that correct?
A. Yes.
Q. Were you counsel of record in that case?
A. Yes. Well, together with Mr. Knickerbocker, who was the city attorney at the time.
Q. This is exhibit 130. I will represent to you that this is a copy of the District Court opinion in this case, and the counsel of record noted in this opinion, Richard Knickerbocker and Gene E. Penn?
A. Yes.
Q. Do you know who Mr. Penn was?
A. Yes, I do.
Q. It doesn't have your name there?
A. No, it doesn't.
Q. Why does it not appear there if you were counsel of record?
A. Apparently an oversight.
Q. Okay. But you worked with Mr. Knickerbocker and Mr. Penn on the lawsuit?
A. Yes, I did.
Q. The upshot of this was the Federal District Court looked at all these rules, and I think you mentioned analysis under equal protection
and commerce clause?
   A. That's my recollection.
   Q. Wasn't there also an analysis under federal preemption?
   A. Yes, there was.
   Q. And applying all that analysis, the court upheld these four ordinances, including the city's right to have this very unique noise limit?
   A. I'm not sure if it was unique at the time, but it certainly upheld the four ordinances.
   Q. You understood there were noise monitors, one about 1,620 feet off this end, and another off here, measured SENEL, the single event?
   A. There was a meter at each end of the runway, it measured the noise and corresponded to I believe some meter in the airport office, and that's what it measured.
   Q. The business interests, the airport association, national business interests, they all attacked that noise ordinance; is that correct?
   A. Yes.
   Q. And the curfew and the helicopter stuff. The District Court said that's all within the city's powers, right?
   A. Well, I don't want to characterize Judge Hill's lengthy opinion. But the judge held yes, the city had the power as the proprietor of the airport to regulate noise from aircraft taking
off and landing at its airport.

Q. Put more simply, not only were they not preempted, they survived the commerce clause analysis, equal protection analysis and all those attacks?

A. The four ordinances that were upheld survived the preemption claim, the commerce clause challenge and equal protection claim.

Q. There were also challenges with respect to whether or not these ordinances breached the grant agreements between the FAA and the city through which federal funds were provided to the airport?

A. My recollection is there was some claim to that effect, yes.

Q. So all of these challenges were with respect to all except for the total jet ban, the court refused to enjoin the enforcement of those ordinances?

A. That's correct.

Q. With respect to the total jet ban, there was a different issue; isn't that correct? The court saw things differently?

A. That is quite correct. The court definitely saw things differently.

Q. Do you recall what the city argued to the court?

A. Yes.
Q. What did the city argue to the court about justifying this total jet ban?

A. The city argued based on some expert testimony that we produced that jet noise was of a different character and caliber than propeller noise from aircraft, and therefore it was not discriminatory or irrational for us to ban jet aircraft, even though there were some jet aircraft that made less noise than propeller planes that were allowed to use the airport.

That's what we argued, in a nutshell. I'm sure it was much more complicated than that.

Q. I'm sure. But, for example, if the argument was even if there is a jet that comes in at 80 decibels, it's a type of sound no one wants to hear, in comparison to a prop plane that comes in at 99 decibels, right?

A. I'm not sure I would agree with that a hundred percent. That's generally the argument we made.

I'm not sure we got to the fine point of saying even if the noise was as low as 80 that would pertain. I'm not a noise expert myself. That's the gist of our argument.

Q. I'm not trying to say you used the number 80 in your argument, or any other number. Generally the argument was even a quiet jet sounds worse than a loud prop plane, where both might need
the hundred decibel level?
A. That's among the arguments we advanced, yes.
Q. There was also an argument about aircraft safety?
A. I don't recall, but I recall there was.
Q. Look at the upper right hand corner of the case. There are numbers on pages in bold letters, page sixteen.
A. I see it.
Q. I believe the first full paragraph is talking about the jet ban resolution or ordinance. Isn't it correct that it says that the jet ban is justified as both a noise and safety regulation?
A. That's what it says.
Q. And the following paragraph, the court -- and there is some discussion there, isn't there, on page sixteen of this document?
A. Yes. The judge finds that the evidence is utterly convincing that the modern jets are at least as safe if not safer than piston engine fixed wing aircraft now allowed to use the airport.
Q. Is it your understanding -- by the way, didn't the judge go out with the attorneys and the parties and actually listen to a brand new business class jet and compare it to a louder prop plane?
A. I don't think so. There was a jet test which I remember. Since I was only the assistant
city attorney I got to ride in the prop plane flown
by the lawyer for the other side instead of the jet.

But there was a test administered by the FAA in which they flew various type of aircraft, including jets and fixed wing aircraft at the airport, and measured the noise. I don't believe that Judge Hill was at that test.

Q. Did he get recordings of the test?
A. Yes. He got full testimony about the test. And I think he got recordings. I honestly don't remember.

Q. Was it your understanding he heard a very quiet business jet and a very loud propeller plane, amongst other recordings?
A. I don't fully remember. I wouldn't doubt it.

Q. The judge looked at the two justifications the city had, one aircraft safety, and said there is no evidence that these brand new jets -- most impressed with the brand new jets because they were quieter; is that correct?
A. I can't speculate as to what impressed him.

Q. In any event, your understanding is that he dismissed the justification of the aircraft safety?
A. Yes.
Q. And dismissed the justification of the difference in the noise, saying in effect a really quiet jet could actually be less imposing on the community than a really noisy aircraft that would meet the hundred decibels?

A. That seemed to be what he found.

Q. So basically he said the city failed to justify this absolute categorical ban and found it to be discriminatory?

MR. GAMS: I object.

MR. HENDERSON: I will withdraw the question.

Q. So, he enjoined this absolute jet ban?

A. Yes.

Q. He said you can't enforce the absolute jet ban, you have to live with this, which applies to all aircraft.

A. He upheld that ordinance.

Q. And it applied to all aircraft, including jets?

A. Yes.

Q. And in doing so was there any indication from the court that you could lower this?

A. My recollection is that the judge said he expressed no opinion as to what would happen if the city lowered it.

Q. Including to a level that would exclude all jets?
A. I believe he made a remark to that effect.

Q. So the city could have said if we want to get rid of all jets we will just lower this. They could have said that?

A. Yes.

Q. But they didn't?

A. They adopted the 85 decibel ordinance.

Q. I want to get to that. First I want to ask, when you justified the jet ban were you justifying it on the basis of fences being blown down?

A. I don't know. I came to work for the city in 1978. I believe the jet ban was adopted prior to that. I participated in defending it. I didn't participate in the drafting of it so I'm not sure the exact motivation for the city's adoption of that ordinance.

Q. I believe you said you were there until 1985?

A. Yes.

Q. At any time when you were there do you recall fences being blown down by jets across Bundy?

A. I don't recall any.

Q. How about complaints from the community of fumes from long-idling aircraft?

A. I don't recall any complaints about
fumes.

Q. Even when you were drafting the 1984 agreement or participating in the negotiations, do you remember that being an issue?
A. Fumes?
Q. Yes.
A. No, I don't.
Q. How about blast, direct jet blast coming out of jets holding brakes while taking off? Do you remember that being an issue?
A. No, I don't. I don't recall it. Not to say it wouldn't have come up in some study, but I don't recall it.

Q. I want to get back to the possibility of lowering the decibel level of all aircraft. This was like a speed limit saying you have a thirty-five mile an hour speed limit, applies to everyone equally?
A. That's what we analogized it to.
Q. And also that you could lower the speed limit as long as you lower for everyone?
A. What I said was, he expressed no opinion on what would happen if you lower it.
Q. But given the fact that he had upheld under all challenges the hundred decibels, it wasn't because he liked the number hundred?
A. No. The judge was quite plain on this: The judge was not interfering with the
legislative prerogative of the city to determine what was an appropriate limit. He simply said that ordinance was discriminatory, didn't interfere with interstate commerce and wasn't preemptive. He was saying that was okay but he wasn't about to suggest to the City Council what to adopt. He was quite careful about that.

Q. So the City Council, in reaction to this, very quickly lowered the decibel limit to 85 decibels?

A. That is correct.

Q. That's not the whole truth, is it?

A. I don't know what the whole truth is. Look at the entire ordinance.


A. Page thirteen contains a grandfather clause.

Q. Right. So the city didn't lower to 85 for all aircraft, did it? It lowered to 85 for all aircraft except for the special grandfather provision; isn't that true? Yes or no.

A. I'm not going to answer yes or no. It's true for a period of approximately nine months. What he did, if I understand correctly from reading the face, and basically what I remember, is that they gave existing aircraft unable to meet the 85 decibel limit a period of
nine months with which to relocate from the airport.

The grandfather clause says it shall not apply to an aircraft that's based, which I think mean tied down, at the airport on September 10, 1979, which I think it was the date of the judge's ruling, until June 1, 1980 when it would be in full force and effect.

Your question is correct. It didn't apply to all aircraft for a period of nine months going forward from the adoption of the ordinance.

Q. And so at least for nine or ten months this was discriminatory -- it made a distinction between all aircraft and preexisting aircraft?
A. For a period of nine months, but it never became active because the judge issued a preliminary injunction before the judgment was effective.

Q. This is the same Judge Hill?
A. Yes, the same judge.

Q. And in addition, the city had argued to Judge Hill even before this that the city could lower the decibel limits, but arbitrarily decide who to apply it to?
A. We never suggested to Judge Hill we were being arbitrary. We were suggesting to Judge Hill we could rationally lower the noise limit to protect the peace and quiet of the community.
Q. Turn to page 17 of the case.

I will read to you a sentence, and you can confirm it, as to whether or not it's in this opinion. It's the second complete paragraph, first sentence of the second complete paragraph.

It says the city, within our admissible area of regulation, we can decide even arbitrarily whom to let in and whom to exclude.

Do you see that?

A. I see it. That's what Judge Hill said. I don't know I would characterize that's what we argued, but that's what he said.

Q. You think the judge misunderstood the city's argument?

A. I don't know. I don't want to speculate on that.

Q. Do you know the reasoning for enjoining this 85 decibel?

A. Yes, I do.

Q. What was it? Is it in the court opinion?

A. It was in the preliminary injunction. I have a vivid recollection.

Q. Let's leave that alone. I don't want you to characterize the court's opinion if it's not in writing.

Moving on, so basically the city decides okay, we will stay with the hundred for a
while. We will go back to the hundred. Since 85
was enjoined you put in place a resolution
restoring the hundred decibel limit applying to all
aircraft?
   A. Yes.
   Q. And at the same time the city says
let's, as soon as legally feasible we will close
the airport?
   A. That's correct.
   Q. Now --
   A. We intend to close the airport.
   Q. As soon as legally feasible.
   You were aware there was an instrument
of transfer between the United States Government
and the City of Santa Monica, were you not?
   A. Yes, I was.
   Q. And this was made in 1948 after the, in
World War II the federal government came in and
basically built this runway, right?
   A. Yes. The federal government built the
runway. I believe they built it to accommodate the
Douglas aircraft factory holding DC-3's and fours.
   Q. The employment of Douglas peaked in
1943?
   A. That's what I've heard.
   Q. Now, at the end of the war, as they did
all over the country in many airports and
communities, they said you, community, you get it
back, it's yours. But they required an instrument of transfer. And that's exhibit 341.

I will just show you this copy.

There is a full paragraph at the bottom of this particular page. What's the top of the page. The top of the page is -- book 28955 page 216.

And the last full paragraph, I will sum this up quickly, is that basically if the city ever in perpetuity ever tries to convert any of this property to any other use, then the federal government gets it back, or can operate to get it back at that time?

A. I think that's a reasonable plane English statement of what that purports to say.

Q. Okay. So one of the problems in 1981 when you were there of the city saying gee, we intend to close the airport and perhaps convert it to other uses, is this instrument of transfer where the federal government says go ahead and try and then it's ours?

A. That was a problem.

Q. It's still a problem, isn't it, as far as you know?

A. Yes, it's still a problem.

Q. Okay.

A. As far as I know it's still a problem.

Q. And for example there is nothing in the
1984 agreement that you worked on that did away with this basic problem, is there?

A. I don't think so. I should point out there was difference of opinion as to how the instrument of transfer was interpreted or would be interpreted in the future. It was a fairly complicated subject, but the answer to your question is the problem is not going away.

Q. And looking again at the '84 agreement, the city agreed with the FAA to lower this limit to 95?

A. Yes.

Q. And do you know why 95 was chosen?

A. It was a compromise.

Q. A compromise between the FAA, the city, and I think you testified the national business interests involved?

A. No. The national business interests were involved possibly in discussions. They were certainly involved in the lawsuit. The specific negotiations were just between the city and the FAA, and people were consulted, including I would be certain the national interests as well as the local interests.

THE COURT: How was the compromise to 95 dB memorialized?

Q. BY MR. HENDERSON: Is it correct that it was memorialized in two ways? One in the '84
agreement as the agreement between the federal
government and the city, and secondly as a
resolution later passed by the city?

A. I think an ordinance, but yes.

Q. I think you just said the only parties
to the '84 agreement, the actual signatories were
the federal government and the city?

A. I think that's correct.

Q. And isn't it true that looking at the
1984 agreement, if you get that out, first of
all -- you can answer this while you are looking --
there was nothing in the 1984 agreement that said
that people who live at the east end of the airport
no longer have constitutional rights to the
property?

MR. GAMS: Objection, Your Honor,
argumentative.

THE COURT: Overruled.

THE WITNESS: No, there was nothing in the
1984 agreement that said that the people living at
the east or west end of the airport lost their
constitutional rights.

Q. BY MR. HENDERSON: It wasn't the intent
of the city to bring about that outcome that these
people would lose their constitutional rights, was
it?

A. Certainly not.

Q. Looking at the 1984 agreement, page 2
at the top, the first full sentence, fundamental purpose of the agreement is to expand and improve communication, cooperation, and mutual understanding of the various perspectives of the parties while recognizing and preserving their respective legal rights?

A. Yes.

Q. Was it the city's intent in entering into this agreement to preserve the city's legal rights, except as they were perhaps forfeited or stated, limited in this agreement?

A. Yes.

Q. On the next page it says amongst other things that the city has the responsibility to manage the airport, and there is a concluding clause, but in accordance with the principles of Santa Monica Airport Association versus the City of Santa Monica, the District Court case in 1979, affirmed by the Ninth Circuit in, it should have read 1981; is that correct?

A. That's correct.

Q. So all of the analysis of preemption, equal protection, and commerce clause analysis, that went up to upholding all the ordinances except the absolute jet ban, were meant to be preserved by the 1984 agreement; isn't that true?

A. I would say generally yes.

Q. Finally on page 14 of the 1984
agreement, the last paragraph, section fourteen spilling over from the previous page:

"Parties recognize and agree that it is appropriate for the city to exercise its proprietary authority to adopt ordinances and regulations applicable to lessees and users of the airport consistent with the terms of the agreement."

A. Yes.

Q. That was in fact what lawyers call a reserved powers clause, right? You were reserving unto the city the proprietary authority to regulate lessees and users of the airport?

A. Yes.

Q. And that would include the FBO's?

A. Yes.

Q. And users would include aircraft owners and operators?

A. Yes, as well as other persons using the aircraft, but principally aircraft users and operators.

Q. Your understanding, the '84 agreement was to allow the city to retain all the powers it had under the preemption analysis, commerce clause analysis, equal protection clause analysis in the 1979 lawsuit, such that the city could continue to regulate airport users and owners; is that correct?
A. Yes.

MR. HENDERSON: No further questions.

MR. TACHIKI: Nothing further, Your Honor.

THE COURT: Thank you Mr. Stark. Appreciate your help.

Okay, ladies and gentlemen, 1:30.

(At 12:00 the testimony of Mr. Stark was concluded)
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

SANTA MONICA AIRPORT ASSOCIATION,

PLAINTIFFS-APPELLANTS,

VS.

CASE NO. SC059450

CITY OF SANTA MONICA,

DEFENDANT-RESPONDENT.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE CESAR C. SARMIENTO, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
TUESDAY, MARCH 19, 2003

APPEARANCES:

FOR THE PLAINTIFFS-APPELLANTS:

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FOR THE DEFENDANT AND RESPONDENT:

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VOLUME 3 OF 12 VOLUMES
PAGES 301 THROUGH 456-600

SUSAN M. POKERSNIK, CSR NO. 10298
OFFICIAL REPORTER
THE COURT: ALL RIGHT. WE'RE ON THE RECORD IN THIS MATTER.

OKAY. I GOT THE MESSAGE YESTERDAY THAT WE'RE GOING TO PROCEED ON THE CONTRACT ISSUE REGARDING THE BENEFICIARY.

MR. TACHIKI: YES. BEFORE WE START, YOUR HONOR, I JUST WANT TO STRAIGHTEN OUT ONE ISSUE. I SHOULD HAVE MENTIONED IT ON MONDAY. BUT THE WAY THE LAW IS ON THIRD PARTY BENEFICIARY, ACTUALLY, THE BURDEN OF PROOF IS ON THE PLAINTIFF. IT'S IN THAT GARCIA CASE THAT I CITED IN THE TRIAL BRIEF BECAUSE IT IS AN AFFIRMATIVE PART OF THEIR ACTION, THAT THEY HAVE TO PROVE A STANDING.

AS FOR TODAY, I DON'T THINK IT WILL AFFECT THE ORDER OF TESTIMONY.

THE COURT: ALL RIGHT. SO WHO GETS TO CALL HIM AS A WITNESS?
MR. TACHIJI: I'LL CALL HIM AS A WITNESS.

MR. KIRSCHBAUM: YEAH, THAT'S FINE, YOUR HONOR. I JUST REALLY HAVEN'T BRIEFED THE ISSUE. I MEAN, ORDINARILY, AN AFFIRMATIVE DEFENSE, THE DEFENDANT BEARS THE BURDEN OF PROOF. I'VE BEEN IN THOSE ISSUES MANY TIMES.

I'M NOT SURE IF THERE IS AN EXCEPTION OF THIRD PARTY BENEFICIARY. I DON'T HAVE ANY REASON TO DOUBT THAT AT THE MOMENT.

THE COURT: I WOULD LIKE TO REVIEW THE CASE -- PORTION OF THE CASE THAT DEALS WITH MR. TACHIJI'S SIDE OF THINGS, BUT AS FAR AS TODAY'S TESTIMONY, CALL THE FIRST WITNESS.

MR. TACHIJI: I WILL, YOUR HONOR. I WOULD LIKE TO CALL SHANE STARK.

SHANE STARK, CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE WITNESS: I WILL AFFIRM.

THE CLERK: STAND TO BE AFFIRMED, PLEASE. PLEASE RAISE YOUR RIGHT HAND. YOU SOLEMNLY AFFIRM THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH? THIS YOU DO UNDER PENALTY OF PERJURY?

THE WITNESS: YES, I DO.
THE CLERK: THANK YOU.

PLEASE HAVE A SEAT.

SIR, CAN WE HAVE YOU STATE YOUR NAME AND

SPELL YOUR LAST NAME FOR THE RECORD.

THE WITNESS: THAT'S STEPHEN, S-T-E-P-H-E-N,


THE CLERK: THANK YOU.

DIRECT EXAMINATION

BY MR. TACHIKI:

Q GOOD MORNING, MR. STARK.

COULD YOU TELL US RIGHT NOW WHO YOU CURRENTLY

WORK FOR?

A I WORK FOR THE COUNTY OF SANTA BARBARA.

Q WHAT IS YOUR POSITION THERE?

A I'M THE COUNTY COUNSEL. THAT'S WITH AN

S-E-L.

Q HOW LONG HAVE YOU BEEN THE COUNTY COUNSEL?

A SINCE MAY OF 1994. THAT'S NINE YEARS NOW.

Q AND PRIOR TO BECOMING COUNTY COUNSEL, DID YOU

ALSO WORK FOR THE CITY OF SANTA MONICA?

A AT ONE TIME, YES.

Q WHAT POSITION DID YOU HOLD WITH THE CITY OF

SANTA MONICA?

A MOST OF THE TIME I WAS ASSISTANT CITY

ATTORNEY.

Q AND DO YOU REMEMBER WHEN YOU STARTED WORKING

FOR THE CITY OF SANTA MONICA?

A YES, I DO.
Q  WHEN WAS THAT?
Q  WHEN YOU STARTED WORKING FOR THE CITY OF
SANTA MONICA, WERE YOU ASSIGNED TO SOME LITIGATION
INVOLVING SANTA MONICA AIRPORT?
A  YES, I WAS.
Q  WHAT CASE WAS THAT?
A  I BELIEVE THE NAME OF THE CASE WAS
SANTA MONICA AIRPORT ASSOCIATION VERSUS THE CITY OF
SANTA MONICA.
Q  AND DO YOU REMEMBER WHAT THE SUBJECT MATTER
OF THAT LITIGATION WAS?
A  YES.
Q  WHAT WAS THAT?
A  THE SUBJECT MATTER OF THE LITIGATION WAS A
SERIES OF REGULATIONS THAT THE CITY IMPOSED TO ABATE
NOISE MADE BY AIRCRAFT LANDING AND DEPARTING FROM THE
SANTA MONICA AIRPORT. THERE WERE FIVE OF THEM
ALTOGETHER, AS I RECALL.
Q  AND WAS ONE OF THEM THE BAN ON JET AIRCRAFT?
A  THERE WAS A BAN ON JET AIRCRAFT. THERE WAS
ALSO, WHAT'S CALLED, A SINGLE EVENT, OR SENEL NOISE
LIMIT, I THINK OF 100 DECIBELS. THERE WAS A LIMITATION
ON TOUCH-AND-GO FLYING OR TRAINING PATTERN. THERE WAS A
BAN ON HELICOPTER TRAINING, AND I BELIEVE THERE WAS A
NIGHT CURFEW.
Q  AND DO YOU REMEMBER WHO THE PLAINTIFFS WERE
IN THAT CASE?
A THE ORIGINAL PLAINTIFF WAS THE SANTA MONICA AIRPORT ASSOCIATION. SANTA MONICA -- YEAH, SMAA, SANTA MONICA AIRPORT ASSOCIATION. SUBSEQUENTLY, THE GENERAL AVIATION MANUFACTURERS' ASSOCIATION, GAMA, ACRONYM, AND THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION -- I THINK THEY CALLED THEMSELVES NBAA -- INTERVENED AND BECAME PARTIES TO THE LITIGATION.

Q AND YOU WERE ONE OF THE TRIAL ATTORNEYS THAT REPRESENTED THE CITY IN THAT CASE; IS THAT CORRECT?

A YES. I WAS BASICALLY THE SECOND CHAIR TO MR. KNICKERBOCKER.

Q NOW, DO YOU RECALL WHEN THE DISTRICT COURT ISSUED ITS OPINION IN THAT CASE?

A YES, I DO.

Q WHAT YEAR WAS THAT IN?

A IT WAS 1979. I BELIEVE, IT WAS IN SEPTEMBER.

Q AND THEN WAS THAT OPINION SUBSEQUENTLY APPEALED TO THE COURT OF APPEALS FOR THE --

A YES, IT WAS.

Q DO YOU REMEMBER WHEN THAT DECISION CAME DOWN?

A I BELIEVE THE NINTH CIRCUIT'S ORIGINAL DECISION CAME DOWN IN APRIL OF 1981, AND I THINK THERE WAS A PETITION FOR A REHEARING IN BANK. IT WAS EITHER AN IN-BANK OPINION OR DENIAL -- I CAN'T REMEMBER WHICH -- FOUR OR FIVE MONTHS LATER.

THE COURT: IS THIS GENTLEMAN ON THE WITNESS LIST?

MR. TACHIKI: YES, HE IS.

THE COURT: WHAT NUMBER IS HE?
MR. KIRCHBAUM: HE'S NO. 5 FOR THE CITY.

MR. TACHIKI: YES, NO. 5, YOUR HONOR.

THE COURT: OKAY.

Q BY MR. TACHIKI: IS IT FAIR TO SAY THEN BY 1981, THE LAWSUIT FILED BY THE SANTA MONICA AIRPORT ASSOCIATION, ISSUES, WAS OVER WITH?

A WHEN THE ORDINANCES --

THE COURT: BY WHAT YEAR?

THE WITNESS: BY --

MR. TACHIKI: BY 1981.

THE WITNESS: I THINK THAT'S A FAIR STATEMENT.

Q BY MR. TACHIKI: SO THERE WERE NO FURTHER JUDICIAL PROCEEDINGS IN THAT CASE AFTER 1981?

A IN THAT CASE. THERE WERE OTHER CASES.

Q OKAY. AROUND THAT SAME TIME IN 1980, WAS THERE SOME DISCUSSION IN THE CITY ABOUT CLOSING THE AIRPORT?

A DID YOU SAY IN 1980?

Q EARLY 1980S, AROUND 1981?

A I WOULD SAY, YES. I WOULD SAY PROBABLY BEFORE 1981. IT WAS A CAMPAIGN ISSUE, IF I RECALL, IN THE 1981 ELECTION.

Q DO YOU RECALL THE CITY COUNCIL PASSING ANY RESOLUTIONS REGARDING THIS MATTER?

A YES, I DO. IF I REMEMBER CORRECTLY, WHEN THEY HAD NEWLY ELECTED COUNCIL MEMBERS IN APRIL OF 1981, THEY DIRECTED THE CITY ATTORNEY -- AT THAT TIME, IT WAS BOB MEYERS WHO HAD JUST TAKEN OFFICE -- TO DRAFT, AND I
1 THINK THE COUNCIL ADOPTED A RESOLUTION THAT SAID THE
2 BOARD, THE COUNCIL INTENDED TO CLOSE THE AIRPORT WHEN
3 LEGALLY POSSIBLE IN, I THINK IT WAS, JUNE OR -- JUNE OF
4 1981.
5 Q NOW, DID THAT RESOLUTION GENERATE ANY
6 INTEREST, ANY NATIONAL AVIATION INTEREST?
7 A WELL, THE RESOLUTION AND THE DISCUSSIONS THAT
8 PRECEDED IT TO THE SAME EFFECT, IT DID, YES.
9 Q AND WHAT PARTICULAR GROUPS CONTACTED THE CITY
10 ABOUT THE RESOLUTION OR ABOUT THE GENERAL DISCUSSION
11 ABOUT THE CLOSURE OF THE AIRPORT?
12 A IN NO PARTICULAR ORDER OF EITHER TIME OR
13 PRIORITY, THE FEDERAL AVIATION ADMINISTRATION, THE FAA;
14 THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION; AND GENERAL
15 AVIATION MANUFACTURERS' ASSOCIATION THROUGH THEIR
16 LAWYERS; I BELIEVE THE SANTA MONICA AIRPORT ASSOCIATION,
17 INDIVIDUALLY LESSEES; INDIVIDUAL PILOTS; BUSINESS
18 INTERESTS.
19 ON THE OTHER SIDE, THERE WERE NEIGHBORHOOD
20 GROUPS BOTH IN SANTA MONICA AND LOS ANGELES THAT WERE
21 PROTESTING AIRPORT NOISE. THERE WAS ONE GROUP OF
22 NEIGHBORS THAT WAS THREATENING TO SUE THE CITY FOR
23 INVERSE CONDEMNATION IF WE DIDN'T REGULATE AIRPORT NOISE
24 AND VARIOUS OTHER TYPES OF PEOPLE THAT WERE INTERESTED
25 IN THE CONTROVERSY.
26 Q SO IS IT FAIR TO SAY THAT THE INVOLVEMENT OF
27 THE FAA PREDATED THE 1981 RESOLUTION?
28 A OH, THAT'S CERTAINLY TRUE. THE FAA EVIDENCED
A CONCERN. WELL, THEY WEREN'T PARTIES TO THE SMAA LITIGATION, BUT THEY SENT THEIR LAWYER TO THE HEARING. THEY HAD SOME PEOPLE TESTIFY. THEY HAD SOME CONCERNS ABOUT THE SCOPE OF OUR REGULATION.

SIMILARLY, THEY HAD SOME CONCERNS, ALTHOUGH THEY WEREN'T PARTIES TO THE LITIGATION, IN FEDERAL COURT THAT FOLLOWED THE CITY'S ADOPTION OF AN 85 DECIBEL ORDINANCE WHICH IS A SECOND AND SEPARATE LAWSUIT. THEY WEREN'T PARTIES, BUT THEY WERE PRESENT IN COURT AND MADE THEIR CONCERNS KNOWN.

SO WE KNEW THAT THE FAA WAS INTERESTED IN THE SITUATION ALTHOUGH I THINK THEY WERE CAREFUL NOT TO TAKE A FORMAL LITIGATION PARTY PRESENCE WELL BEFORE 1981.

Q AND WERE YOU EVER TOLD THAT THE FAA'S INVOLVEMENT WAS A RESULT OF COMPLAINTS BY SMAA?

A NO.

Q NOW, YOU JUST MENTIONED THAT THERE WAS A SUBSEQUENT LAWSUIT THAT WAS FILED AGAINST AN ORDINANCE THE CITY ADOPTED; IS THAT TRUE?

A THAT IS CORRECT. SECOND FEDERAL LAWSUIT.

Q THIS SECOND FEDERAL LAWSUIT, DO YOU REMEMBER WHO THE PLAINTIFFS WERE?

A I THINK I DO. IT WAS THE NBAA AND THE GAMA, THE NATIONAL INTEREST, AND GUNNELL AVIATION WHO IS AN FBO, FIXED BASE OPERATOR, AT THEIR AIRPORT.

Q DO YOU REMEMBER WHAT THAT LAWSUIT WAS ABOUT?

A YES, I DO.

Q AND WHAT WAS THAT?
A I BELIEVE WITHIN DAYS AFTER THE TRIAL COURT'S DECISION INVALIDATING THE JET BAN, THE SANTA MONICA CITY COUNCIL ADOPTED AN ORDINANCE THAT LOWERED THE SINGLE EVENT NOISE LEVEL FROM 100 TO 85 DECIBELS WHICH IS A PRETTY RADICAL JUMP, I BELIEVE, WITH EITHER THE EXPRESSED OR CLEARLY IMPLIED PURPOSE OF SETTING THE NOISE LIMIT SO LOW THAT NO JET AIRCRAFT THEN IN EXISTENCE COULD MEET THE LIMIT.

WE WERE SUED WITHIN A MONTH. AND I BELIEVE ABOUT A MONTH AFTER THAT, JUDGE HILL ISSUED A PRELIMINARY INJUNCTION AGAINST ITS ENFORCEMENT.

SUBSEQUENT TO THAT, THERE WERE DISCUSSIONS ABOUT WHAT SCOPE THAT LAWSUIT WOULD TAKE. AND THERE WERE OTHER ISSUES THAT WERE BROUGHT INTO IT AND DISCUSSED. AND THAT WAS THE ESSENCE OF THE SECOND LAWSUIT.

Q WAS SMAA A PARTY TO THAT LAWSUIT?

A I DON'T BELIEVE THEY WERE.

Q NOW, SUBSEQUENT TO THE ENTRY OF THE INJUNCTION IN THE NBAA LAWSUIT, DID THE PARTIES REACH SOME TYPE OF SETTLEMENT OR AGREEMENT ABOUT HOW TO DISPOSE OF THE PLACE?

A IN THE SECOND LAWSUIT YOU MEAN?

Q YES.

A YES, WE DID.

Q OKAY. I WANT YOU TO -- WE'RE GOING TO HAVE TO PULL OUT SOME NOTEBOOKS.

THE COURT: WHAT YEAR ARE WE TALKING ABOUT NOW?

THE WITNESS: THE SECOND LAWSUIT WAS IN 1979. IT
WAS THE INJUNCTION. THE SETTLEMENT OF THE LAWSUIT WAS
ACTUALLY REACHED IN JANUARY OF 1983. SO WE'RE TALKING
ABOUT THE EARLY '80S WHEN THEY WERE TALKING ABOUT THAT
LAWSUIT.

MR. TACHIKI: YOUR HONOR, IF I COULD, I NEED TO
PULL OUT SOME EXHIBITS.

THE COURT: OKAY.

MR. TACHIKI: WE'RE GOING TO PULL OUT
EXHIBITS 491, 492 AND 494.

MR. KIRSCHBAUM: OKAY. THOSE ARE IN VOLUME 10.

THE COURT: IS THIS PLAINTIFFS' VOLUME 10?

MR. TACHIKI: THESE ARE PLAINTIFFS' VOLUMES.

VOLUME 10.

THE WITNESS: YOU WANT ME TO LOOK AT 492?

Q BY MR. TACHIKI: CAN YOU LOOK AT 491, 492,
AND 494. 491 SHOULD BE THE JOINT MOTION TO DISMISS.

A IT IS.

Q AND 492 SHOULD BE THE JOINT STATUS CONFERENCE
REPORT.

A YES, IT IS.

Q AND 494 SHOULD BE AN ORDER IN THE SAME CASE.

A YES, IT IS.

Q ALL RIGHT.

NOW, THE RESOLUTION THAT WE JUST TALKED ABOUT
THAT OCCURRED IN 1993, IS IT ENCOMPASSED WITHIN THESE
DOCUMENTS HERE?

A THESE ARE THE DOCUMENTS THAT EFFECTUATED THE
SETTLEMENT. THE JUDGE SIGNED THE ORDER. THE COPY
THAT'S IN THE EXHIBIT ISN'T SIGNED, BUT I'VE SEEN A SIGNED COPY.

Q CAN YOU BRIEFLY SUMMARIZE WHAT THE SCOPE OF THIS SETTLEMENT WAS?

A I WILL TRY. MECHANICALLY, THE PLAINTIFFS AGREED TO DISMISS THEIR COMPLAINT WITHOUT PREJUDICE, AND THE CITY AGREED TO UNDERTAKE A PROCESS THAT WOULD LEAD TO A MASTER PLAN FOR DEVELOPMENT OF THE AIRPORT. AND BY MASTER PLAN, I MEAN AN OFFICIAL AIRPORT PLAN THAT'S APPROVED BY THE FEDERAL GOVERNMENT, NOT A PLANNING -- A CITY PLANNING DOCUMENT.

AND I BELIEVE -- I CAN DOUBLE-CHECK IT, BUT I'M REASONABLY CERTAIN THAT THE CITY HAD UNTIL NOVEMBER OF 1983 TO FINISH THE PLAN. AND IF THEY DID, THE LITIGATION WOULD REMAIN DISMISSED. AND IF THEY MESSED UP ALONG THE WAY OR DIDN'T GET THE PLAN DONE ON TIME, THEN THE PLAINTIFFS COULD REVIVE THE LITIGATION.

PRESUMABLY, THEY WOULD HAVE FILED AN AMENDED COMPLAINT. WE WOULD HAVE STARTED FROM THERE.

Q OKAY. AND THAT'S ENCOMPASSED WITHIN THE ORDER SIGNED BY JUDGE HILL IN THIS CASE?

A YES.

Q IN 1983?

A YES.

Q NOW, SUBSEQUENT TO THE SIGNING OF THAT ORDER BY JUDGE HILL, DID THE CITY UNDERTAKE A PLANNING PROCESS FOR THE AIRPORT?

A YES, THEY DID.
Q AND WOULD YOU EXPLAIN BRIEFLY WHAT THAT PROCESS WAS?

A THE PROCESS WAS CONDUCTED BY THE USE OF A CONSULTANT WHICH I THINK IS CH2M HILL. IT'S AN ENGINEERING FIRM WITH THE INPUT OF AN AIRPORT WORKING GROUP. IT WAS A CITY STAFF CONSULTANT, AND THEY HAD AN AIRPORT WORKING GROUP. AND ON A MONTHLY BASIS THEY MET AT THE DOUGLAS MUSEUM AND HAD AREAS TO DISCUSS ON PARTICULAR ISSUES AND PROBLEMS RELATED TO THE AIRPORT.


Q OKAY. LET ME HAVE YOU TAKE A LOOK AT EXHIBIT 495, AND THAT'S THE PLAINTIFFS' 495 AND DEFENDANTS' EXHIBIT 2150.

A YEAH. YEAH. I SEE IT. 425. WHERE IS 2150?

Q YEAH. I'LL GET IT FOR YOU.

MR. KIRSCHBAUM: 2150?

MR. TACHIKI: 2150.

THE WITNESS: I'VE LOOKED AT THEM.

Q BY MR. TACHIKI: OKAY. LOOKING AT EXHIBIT 495, DO YOU SEE AT THE TOP WHERE IT SAYS "AIRPORT WORKING GROUP"?

A YES, I DO.

Q DOES THIS LIST REPRESENT THE MEMBERS OF THE AIRPORT WORKING GROUP?
A: Yes, although my understanding is that the airport working group is assembled around a large round table, and if other people from similar community aviation interests or neighborhood interests wanted to sit around the table and participate in discussions, they would have been allowed to do so.

B: But this would be the basic group, core group of people that were working on the airport.

A: Base group, 2150, is also an airport working group roster for the May 11th meeting, same basic people you saw on the earlier roster?

A: It appears to be the same group of people.

B: And you're listed on both of these rosters; isn't that correct?

A: Yes, I was.

B: You were present at the working group meetings?

A: Yes.

B: And is it fair to say that the purpose of the working group meetings was to solicit input on aviation issues for the airport from a broad segment of the community?

A: That's a fair statement.

B: Okay. And was it a formal type of meeting or was it informal?

A: Well, there wasn't sworn testimony or, you know, recorded proceedings or anything like that. There was an agenda and there were set topics that were going
TO BE DISCUSSED, AND I THINK THERE WERE HANDOUTS AT THE MEETINGS.

BUT I WOULDN'T SAY IT WAS A FORMAL TYPE.

CERTAINLY NOT LIKE A COURTFROOM OR EVEN A CITY COUNCIL MEETING. IT WASN'T A SET, YOU KNOW, COMMON PERIOD, THINGS LIKE THAT.

Q WELL, WAS IT FAIR TO SAY THAT THIS WAS ALL DIRECTED TOWARDS DEVELOPING TOPICS FOR THE MASTER PLAN?

THE COURT: ONE MOMENT, PLEASE.

ALL RIGHT. CONTINUE, PLEASE.

THE WITNESS: COULD YOU REPEAT THE QUESTION.

Q BY MR. TACHIJI: YEAH. I ASKED, WAS IT ACCURATE THAT THE PURPOSE OF THE AIRPORT WORKING GROUP WAS TO SOLICIT INFORMATION ABOUT TOPICS THAT WOULD LEAD TO THE MASTER PLAN?

A THAT'S A FAIR STATEMENT.

Q NOW, WAS THERE ANY DISCUSSIONS AT THAT POINT ABOUT THE TERMS OF THE 1984 AGREEMENT?

A NO.

THE COURT: I'M SORRY. WAS THE QUESTION, WAS THERE ANY DISCUSSIONS?

Q BY MR. TACHIJI: WAS THERE ANY DISCUSSIONS ABOUT THE -- IN THE WORK GROUP MEETING ABOUT THE 1984 AGREEMENT?

A NO, NOT ABOUT THE TERMS OF THE 1984 AGREEMENT.

Q NOW, DID THE CITY COMPLETE THE MASTER PLANNING PROCESS?
A: I BELIEVE IT DID.
Q: DID IT COMPLETE IT WITHIN THAT REQUIRED PERIOD BY, NOVEMBER OF 1983?
A: YES, IT DID.
THE COURT: HOLD ON A SECOND.
ALL RIGHT. GO AHEAD.
WE'RE LOOKING AT 425?
MR. TACHIKI: YEAH. WE'RE LOOKING AT EXHIBIT 425.
Q: IS THAT THE DOCUMENT THAT ULTIMATELY CAME OUT OF THE AIRPORT WORKING GROUP PROCESS?
A: THAT'S THE MASTER PLAN, YES.
Q: OKAY. IN FACT, THERE ARE A COUPLE OF DOCUMENTS THAT CAME OUT OF THAT PROCESS. IF YOU WOULD LOOK AT EXHIBIT 641 WHICH IS THE NOTEBOOK RIGHT UP HERE.
Q: BY MR. TACHIKI: DO YOU SEE THAT?
A: ITEM 641 SAYS, "AIRPORT LAYOUT CONCEPT PLAN."
Q: RIGHT. THAT'S ANOTHER DOCUMENT THAT CAME OUT OF THE AIRPORT WORKING GROUP PROCESS; ISN'T IT?
A: YES, IT IS.
Q: SO BOTH OF THESE PLANS WERE ADOPTED BY NOVEMBER OF 1983; IS THAT CORRECT?
A: YES.
Q: OKAY. SO IS IT FAIR TO SAY, THEN, THAT THE PLANNING PROCESS FOR THE AIRPORT RAN APPROXIMATELY FROM JANUARY OF 1983 THROUGH NOVEMBER OF 1983?
A THAT'S A FAIR STATEMENT.
Q AND BY MEETING THAT DEADLINE, YOU WERE
COMPLYING WITH THE TERMS OF THE DISMISSAL FROM THE NBAA
LAWSUIT; IS THAT CORRECT?
A YES, WE WERE.
Q NOW, FOLLOWING ADOPTION OF THE MASTER PLAN BY
THE CITY IN NOVEMBER, DID THE CITY UNDERTAKE
NEGOTIATIONS WITH THE FAA FOR AN AGREEMENT?
A YES, WE DID.
Q DO YOU RECALL WHO WAS INVOLVED IN NEGOTIATING
THE 1984 AGREEMENT FOR THE CITY OF SANTA MONICA?
A YES.
Q WHO WAS THAT?
A I WAS.
Q AND WHO REPRESENTED THE FAA IN THE
NEGOTIATIONS?
A LEN, LEONARD CIRRUZI. I'M NOT SURE HE WAS
THE GENERAL COUNSEL. I THINK HE WAS THE ASSISTANT
GENERAL COUNSEL OF THE FAA AT THE TIME.
Q AND IF YOU COULD LOOK AT EXHIBIT 414.
A I SEE IT.
Q IS THAT THE DOCUMENT THAT'S COMMONLY REFERRED
TO AS THE 1984 AGREEMENT?
A YES.
Q OKAY. AND THAT'S THE DOCUMENT THAT YOU AND
MR. CIRRUZI WERE NEGOTIATING FOR?
A YES, IT IS.
Q NOW, WHO -- AND BASED UPON YOUR EXPERIENCE IN
NEGOTIATING THIS AGREEMENT, WHO WERE THE PARTIES TO THAT AGREEMENT?

A THE CITY OF SANTA MONICA AND THE FEDERAL AVIATION ADMINISTRATION.

Q AND WHILE YOU WERE NEGOTIATING THIS AGREEMENT, WERE THERE ANY OTHER PARTIES REPRESENTED IN THE NEGOTIATIONS?

A NO.

Q AND WAS THE SANTA MONICA AIRPORT ASSOCIATION CONSIDERED TO BE A PARTY TO THE 1984 AGREEMENT?

MR. KIRSCHBAUM: OBJECTION. VAGUE AND AMBIGUOUS.

CONSIDERED BY WHOM?

THE COURT: ALL RIGHT.

Q BY MR. TACHIKI: LET ME REPHRASE. DID THE CITY OF SANTA MONICA CONSIDER THE SANTA MONICA AIRPORT ASSOCIATION TO BE A PART OF THE 1984 AGREEMENT?

A NO.

Q AS FAR AS YOU KNOW, FROM YOUR CONVERSATIONS WITH THE FAA, DID THE FAA CONSIDER THE SANTA MONICA AIRPORT ASSOCIATION TO BE A PART OF THE AGREEMENT?

MR. KIRSCHBAUM: OBJECTION. CALLS FOR SPECULATION.

THE COURT: YOU'RE ASKING ABOUT WHO?

Q BY MR. TACHIKI: IF HE WAS EVER TOLD BY THE FAA THAT SMAA WAS A PARTY TO THE 1984 AGREEMENT?

THE COURT: YOU CAN ANSWER THAT QUESTION.

THE WITNESS: THEY WERE EXPLICIT. THEY DIDN'T
1 WANT ANY OTHER PARTIES TO THE AGREEMENT BESIDES THE CITY
2 AND THE FAA.
3
4 Q BY MR. TACHIKI: WHY WAS THAT?
5 A THE FAA AND THE CITY WANTED THE AIRPORT
6 AGREEMENT TO BE ESSENTIALLY, AN ORGANIC DOCUMENT, A
7 GOVERNMENT TO GOVERNMENT DOCUMENT THAT WOULD PLUG -- YOU
8 COULD PLUG INTO CERTAIN PROGRAMS AND FUTURE AGREEMENTS
9 AND THEY DIDN'T WANT -- NEITHER OF US WANTED IT TO BE
10 ENFORCED BY ANY PRIVATE PARTIES.
11 THE COURT: ONE MOMENT, PLEASE.
12 NEXT QUESTION, PLEASE.
13 Q BY MR. TACHIKI: DID YOU WANT TO FINISH THAT
14 ANSWER?
15 A YEAH. THERE WERE ADDITIONAL REASONS. FROM
16 THE CITY'S PERSPECTIVE, WE HAD LITIGATED THE ISSUE OF
17 WHETHER THE SMAA WAS A THIRD PARTY BENEFICIARY OR A
18 PARTY TO THE AGREEMENT, AND WE WERE SPECIFIC THAT WE
19 DIDN'T WANT THAT INCLUDED IN THE AGREEMENT BECAUSE IT
20 HAD FOLLOWED THE LITIGATION.
21 THE COURT: HOLD ON A SECOND. I'M NOT
22 UNDERSTANDING WHAT YOU'RE SAYING.
23 THE WITNESS: IN THE AIRPORT ASSOCIATION, IN 1979
24 LITIGATION --
25 THE COURT: RIGHT.
26 THE WITNESS: -- A MINOR COLLATERAL POINT OF JUDGE
27 HILL'S DECISION WAS THAT THE AIRPORT ASSOCIATION DIDN'T
28 HAVE ANY STANDING TO ENFORCE AIRPORT LEASES, NOT THIS
29 AGREEMENT, AIRPORT LEASES AS A THIRD PARTY BENEFICIARY.
THAT WAS A POINT THAT WE HAD WON IN THE COURSE OF THE LITIGATION. WE DIDN'T WANT TO BASICALLY BACKTRACK ON THAT BY MAKING IT ENFORCEABLE.

WE ALSO HAD A CONCERN THAT IF WE MADE THE AIRPORT ASSOCIATION PARTIES TO THE AGREEMENT, THE NEIGHBORS WHO WANTED TO STOP THE AIRPORT GIVE-AWAY AND THE PEOPLE THAT WERE DEMANDING THAT THE CITY REDUCE NOISE WOULD ALSO WANT TO BE INCLUDED AS BENEFICIARIES OR PARTIES TO THE AGREEMENT, AND WE DID NOT WANT THAT.

FROM THE FAA'S PERSPECTIVE, ACCORDING TO MR. CIRRUZI, AT THE TIME, THEY TOOK THE POSITION THAT WHEN THEY HAD A CONTROVERSY WITH AN AIRPORT OPERATOR, THEY HAD A CONTRACT WITH THE AIRPORT OPERATOR. THEY WANTED TO DEAL DIRECTLY WITH THE LOCAL GOVERNMENT, NOT WITH THE NEIGHBORS, NOT WITH THE AVIATION INTEREST OR THE LESSEE. IT WAS SORT OF AN ADMINISTRATIVE PRINCIPLE WITH THEM.

THE COURT: ALL RIGHT. THE FIRST REASON YOU SAID YOU REFERRED TO IT AS AN ORGANIC DOCUMENT, I DON'T UNDERSTAND WHAT YOU MEAN BY THAT.

THE WITNESS: THAT MAY BE AN OVERSTATEMENT, MORE LIKE A CHARTER OR A CONSTITUTION THAN A SPECIFIC POINT BY POINT DETAILED DOCUMENT ALTHOUGH THERE ARE DETAILED DOCUMENTS IN IT.

FOR EXAMPLE, THE FAA DIDN'T -- DOESN'T HAVE A FUNDING COMMITMENT. IN OTHER WORDS, THEY DIDN'T AGREE TO GIVE US ANY MONEY. THEY AGREED TO CONSIDER THINGS AND TO PUT US ON A PRIORITY LIST.
THE COURT: AS YOU WERE NEGOTIATING THIS 1984 AGREEMENT, DID THE ISSUE OF INTENDED BENEFICIARIES COME UP AT ALL, THIRD PART BENEFICIARIES?

THE WITNESS: NOT INTENDED BENEFICIARIES. I'M NOT SURE WE EVER USED THAT TERM. IT WAS CLEAR THAT WE DIDN'T WANT THEM AS PARTIES TO THE AGREEMENT. AND I BELIEVE WE MAY HAVE -- MR. CIRRUZI AND I MAY HAVE DISCUSSED THE FACT THAT WE DIDN'T WANT AN INTENDED BENEFICIARY CLAUSE IN THE AGREEMENT.

Q BY MR. TACHIKI: LET ME SHOW YOU A LETTER FROM THE FAA TO MR. ALSCHULER, PLAINTIFFS' 41.

THE COURT: WHAT IS IT?

MR. TACHIKI: 41. FOUR-ONE.

MR. KIRSCHBAUM: I'M SORRY, MARTY, WHAT WAS THE NUMBER?

MR. TACHIKI: FOUR-ONE. 41.

THE WITNESS: MAY I CLARIFY ONE THING, YOUR HONOR.

THE COURT: GO AHEAD.

THE WITNESS: MR. TACHIKI REMINDED ME OF THIS.


THE COURT: WAS IT USUALLY JUST THE TWO OF YOU DOING THE NEGOTIATION OR DID THE PRINCIPALS SHOW UP AS
WELL?

THE WITNESS: USUALLY IT WAS MR. CIRRUZI AND I, JUST THE TWO OF US.

THE COURT: OKAY.


THE COURT: HOLD ON A SECOND, PLEASE.

MR. TACHIKI: OKAY.

THE COURT: ALL RIGHT. GO AHEAD.

MR. TACHIKI: OKAY.

Q IS THIS LETTER THAT WAS RECEIVED FROM THE FAA, WAS THAT THEIR INDICATION FROM THE CITY OF SANTA MONICA THAT THEY WANTED TO PROCEED WITH THE AGREEMENT FROM THE CITY?

A WITH THE AGREEMENT WITH THE CITY?

Q RIGHT. AND IT WAS ONLY WITH THE CITY; IS THAT CORRECT?

A THAT'S CORRECT.

YOUR HONOR, I DON'T WANT TO MISLEAD THE COURT. YOU HAD ASKED WERE THERE -- WAS THE NEGOTIATIONS JUST BETWEEN THE LAWYERS. THERE WAS A MEETING IN WASHINGTON IN WHICH IT WAS AGREED THAT WE WOULD NEGOTIATE THE AGREEMENT, AND THAT HAD THE CITY MANAGER'S OFFICE FROM THE CITY, AS WELL AS I THINK GENERAL COUNSEL
FROM THE FAA. SO THAT WAS BASICALLY A KICK-OFF MEETING IN WHICH WE DISCUSSED WE WERE GOING TO NEGOTIATE THE AGREEMENT, AND THEN THE ACTUAL TERMS OF THE AGREEMENT WERE NEGOTIATED THROUGH THE LAWYERS.

Q NOW, WHILE YOU WERE NEGOTIATING THE 1984 AGREEMENT, WAS THERE ANY DISCUSSION ABOUT USING THE 1984 AGREEMENT TO SETTLE EXISTING LAWSUITS WITH THIRD PARTIES?

A OTHER THAN THE FAA?

Q OTHER THAN THE FAA.

A NO. THERE WAS A PROVISION IN THE AGREEMENT THAT IN THE EVENT THERE WAS A LAWSUIT, THAT THE AGREEMENT COULD BE INTRODUCED AS EVIDENCE, I BELIEVE, FROM THE CITY'S PERSPECTIVE OF OUR GOOD FAITH EFFORT TO KEEP THE AIRPORT OPEN AND REGULATED ON REASONABLE TERMS. BUT AS FAR AS SETTLING ANY LAWSUITS WITH ANYONE OTHER THAN THE FAA, NO THERE WAS NO INTENTION TO DO SO.

Q AND WAS THE 1984 AGREEMENT AVAILABLE AS EVIDENCE IF THE NBAA OR GAMA TRIED TO REVIVE THE EARLIER LAWSUIT?

A I THINK THAT'S, AT LEAST IF NOT THE PRIMARY, A PRIMARY INTENT OF IT, YEAH.

Q SO, IN FACT, GAMA OR NBAA AGREED WITH THE PROCESSING AND DIDN'T AGREE WITH THE ORDER AND FILED A LAWSUIT, THIS WOULD HAVE BEEN A DEFENSE TO THAT LAWSUIT?

A THAT WAS THEIR INTENTION, THOUGH WE DID NOT BELIEVE THAT GAMA OR NBAA WOULD ATTEMPT TO ATTACK THIS
3 AGREEMENT.

Q NOW, AT THE TIME OF THE 1984 AGREEMENT, WERE YOU AWARE OF SOME ADMINISTRATIVE COMPLAINTS THAT WERE FILED WITH THE FAA?

A I BELIEVE THERE WERE TWO. I THINK THEY WERE CALLED PART 13 COMPLAINTS AT THE TIME. I THINK THE REGULATIONS HAVE CHANGED SINCE THEN.

Q AND DO YOU RECALL WHO FILED THOSE PART 13 COMPLAINTS?

A I THINK GARY DANFORTH FILED ONE OF THEM. HE WAS THE OPERATOR OF A FIXED BASE OPERATION AT THE AIRPORT. AND I THINK -- I'M NOT ENTIRELY SURE, BUT THE SANTA MONICA AIRPORT ASSOCIATION FILED THE OTHER ONE.

Q OKAY. NOW, MR. DANFORTH FILED HIS COMPLAINT ON HIS OWN BEHALF; IS THAT CORRECT?

A YES, HE HAD A BUSINESS AT THE AIRPORT, AND HE WAS AGGRIEVED.

Q I'M GOING TO SHOW YOU EXHIBIT 476. IT'S TWO LETTERS FROM THE FAA, ONE TO SANTA MONICA AIRPORT ASSOCIATION AND ONE TO THE CITY.

THE COURT: WHAT EXHIBIT ARE WE LOOKING AT?
MR. TACHIKI: 476, YOUR HONOR.
THE WITNESS: I SEE THE EXHIBIT.
Q BY MR. TACHIKI: NOW, MR. STARK, DO YOU RECALL RECEIVING LETTERS FROM THE FAA ABOUT THE PART 13 TAKING PLACE?

A YES. THESE TWO LETTERS ARE JUST ABOUT THE SANTA MONICA AIRPORT ASSOCIATION COMPLAINT.
Q OKAY. AND IF YOU LOOK AT THE FIRST LETTER, THE ONE ADDRESSED TO THE SANTA MONICA AIRPORT ASSOCIATION, THE SECOND PARAGRAPH, DOES IT INDICATE THAT THE COMPLAINT WAS INCOMPLETE?
A YES, IT DOES.
Q AND, IN FACT, ON THE SECOND LETTER WHICH IS ADDRESSED TO THE MAYOR OF SANTA MONICA AT THE TIME, RUTH GOLDFRAY, DOES IT ALSO SAY THAT THE COMPLAINT WILL BE SERVED ON THE CITY LATER WHEN THE COMPLAINT IS COMPLETE?
A THAT'S WHAT IT SAID.
Q NOW, TO YOUR KNOWLEDGE, WAS THE COMPLAINT EVER AMENDED?
A I DON'T BELIEVE IT WAS.
Q AND SO DID THE CITY EVER FILE A RESPONSE TO THIS COMPLAINT?
A I DON'T BELIEVE WE EVER DID.
Q SO IT BASICALLY STAYED IN THIS UNFINISHED CONDITION?
A TO THE BEST OF MY KNOWLEDGE, IT'S STILL IN AN UNFINISHED CONDITION. I DON'T HAVE ANY KNOWLEDGE THAT IT'S NOT.
Q NOW, WHILE YOU WERE NEGOTIATING THE AGREEMENT WITH MR. CIRRUZI, DID YOU HAVE ANY DISCUSSIONS WITH THE FAA ABOUT SETTLING ANY STATE COURT LAWSUITS WITH THE SANTA MONICA AIRPORT ASSOCIATION?
A NO.
Q AND TO YOUR KNOWLEDGE, DID THE 1984 AGREEMENT SETTLE ANY DISPUTES THE CITY HAD WITH ANY OTHER PARTY
1 BUT THE FAA?
2 A I BELIEVE IT WAS OUR UNDERSTANDING THAT THE
3 DANFORTH PART 13 COMPLAINT, WHICH WE DID ANSWER, I
4 BELIEVE, WOULD NOT GO FORWARD. BUT THAT COMPLAINT IS
5 WITH THE FAA -- BETWEEN THE FAA AND THE CITY.
6 Q RIGHT. BUT THERE WAS NO DISCUSSION ABOUT
7 SETTLING STATE COURT LAWSUITS?
8 A NO.
9 Q NOW, BASED ON YOUR KNOWLEDGE AS ONE OF THE
10 PRIMARY DRAFTERS OF THE 1984 AGREEMENT, WERE THERE ANY
11 PROVISIONS IN THE 1984 AGREEMENT THAT WERE INTENDED TO
12 BE EXPRESSLY FOR THE BENEFIT OF SMAA?
13 A NO.
14 Q OKAY. AND BASED ON YOUR KNOWLEDGE AS THE
15 PRIMARY DRAFTER OF THE 1984 AGREEMENT, WERE THERE ANY
16 PROVISIONS OF THE 1984 AGREEMENT THAT CONFERRED ANY
17 EXPRESSED STATUS UPON SMAA?
18 A NO.
19 Q AND ISN'T IT TRUE THAT SMAA IS ENTITLED TO
20 THE SAME BENEFITS THAT THE PUBLIC AS A WHOLE IS ENTITLED
21 TO?
22 A THAT WOULD BE GENERALLY TRUE.
23 MR. KIRSCHBAUM: OBJECTION. CALLS FOR A LEGAL
24 CONCLUSION.
25 MR. TACHIKI: HE'S A LAWYER, YOUR HONOR.
26 THE COURT: LET'S ME STEP BACK A MINUTE.
27 WHO ACTUALLY DRAFTED THE DOCUMENT?
28 THE WITNESS: I BELIEVE I DID. WELL, ASSUMING I
1 DID. WE DIDN'T HAVE E-MAIL IN THOSE DAYS. SO WE SENT
2 DRAFTS BACK AND FORTH PRETTY MUCH BY MAIL AND HAD A
3 NUMBER OF PHONE CONVERSATIONS. I SAY "WE," I MEAN
4 MR. CIRRUZI.

5 THE COURT: WHEN YOU DRAFTED THIS, WAS THERE ANY
6 INTENTION ON YOUR PART THAT SANTA MONICA AIRPORT
7 ASSOCIATION HAVE ANY BENEFITS THAT THE PUBLIC WAS NOT
8 ENTITLED TO?
9
10 THE WITNESS: NO.
11
12 THE COURT: IS THERE ANY ORGANIZATION, ANY GROUP
13 IN CERTAIN, THAT HAS ANY RIGHTS THAT ARE NOT RESERVED
14 FOR THE PUBLIC -- THE GENERAL PUBLIC IS NOT ENTITLED TO?
15
16 THE WITNESS: NO.
17
18 THE COURT: MR. TACHIKI, PLEASE.
19
20 Q BY MR. TACHIKI: SO AT THE TIME THE 1984
21 AGREEMENT WAS SIGNED, WAS THE CITY UNDER ANY COURT ORDER
22 TO INCLUDE SMAA AS A PARTY TO THE AGREEMENT?
23
24 A NO.
25
26 Q AND WHILE YOU WERE NEGOTIATING WITH THE FAA,
27 WERE YOU EVER INFORMED BY THE FAA THAT THEY WERE
28 REPRESENTING ANYONE BUT THE FEDERAL GOVERNMENT?
29
30 A NO, TO THE CONTRARY. THEY WERE RATHER
31 PARTICULAR TO INDICATE THAT THEY WERE ONLY REPRESENTING
32 THE FEDERAL GOVERNMENT WHICH I THINK IS THEIR STANDARD
33 PRACTICE.
34
35 Q AND, IN FACT, I HATE TO DO THIS TO YOU. BUT
36 GOING BACK TO THE 1984 AGREEMENT, WHICH IS EXHIBIT 414.
37
38 A OKAY. I HAVE IT.
Q OKAY. DOESN'T, IN FACT, THE 1984 AGREEMENT SPECIFICALLY RESERVE -- HAVE EACH PARTY RESERVE ITS RIGHT WITH RESPECT TO LOSS?

THE COURT: WHAT WAS THAT QUESTION?

MR. TACHIKI: LET ME RESTATE IT.

THE COURT: EXCUSE ME. TO WHAT KIND OF LOSS?

THE WITNESS: THERE IS SECTION 21 OF THE AGREEMENT.

Q BY MR. TACHIKI: RIGHT. IN SECTION 21, WASN'T IT THE INTENT OF THE FAA AND THE CITY BASICALLY TO RESERVE ITS OWN POWERS TO THEMSELVES?

MR. KIRSCHBAUM: OBJECTION. CALLS FOR SPECULATION WITH RESPECT TO THE INTENT OF THE FAA.

THE COURT: HOLD ON A MOMENT. I'M GOING TO READ THIS SECTION.

MR. TACHIKI: PARDON ME, YOUR HONOR.

THE COURT: I JUST WANT TO READ THIS FOR A SECOND.

MR. TACHIKI: OKAY. GO AHEAD.

THE COURT: ALL RIGHT.

WHAT IS THE QUESTION ABOUT THIS SECTION?

MR. TACHIKI: OKAY.

Q SO IN SECTION 21, DOESN'T THAT BASICALLY HAVE BOTH PARTIES, THE CITY AND FAA, ACKNOWLEDGE THAT THEY'RE GOING TO RESERVE THEIR RIGHTS TO ENFORCE THEIR OWN LAWS?

A THAT'S PRETTY MUCH EXACTLY WHAT IT DOES.

Q AND THERE IS NO MENTION OF OTHER PARTIES, IS THERE?

A NO. THAT IS INTENDED.
IF I MIGHT ELABORATE, THE LITIGATION WITH THE
AIRPORT ASSOCIATION, THE ONE THAT RESULTED IN THE
PUBLISHED DECISION, IS ABOUT BALANCING THE FAA'S
REGULATORY RESPONSIBILITY OF CONTROL OF NAVIGABLE AIR
SPACE AND THE CITY'S PROPRIETARY RESPONSIBILITY TO
MANAGE THE AIRPORT'S OPERATIONS.

AND WHERE THE COURT CAME OUT WAS THAT WE HAVE
THE AUTHORITY TO REGULATE UNDER OUR PROPRIETARY AIRCRAFT
WITHIN A REASONABLE TIME AND SPACE AFTER LANDING AND
TAKING OFF AT THE AIRPORT. THAT'S BASICALLY WHAT THE
LITIGATION WAS ABOUT.

AND BOTH THE CITY AND THE FAA WERE SENSITIVE
ABOUT NOT DISTURBING IT, AND I THINK THE FAA WAS
SENSITIVE ABOUT SETTING A PRINCIPLE THAT THEY DID NOT
WANT TO BE INVOLVED IN -- THE TERM TODAY IS
"MICROMANAGE" -- THE DETAILS OF CITY AIRPORT
REGULATIONS. THAT'S WHY THAT CLAUSE IS IN THERE.

Q OKAY. AND IF YOU COULD TURN BACK TO
SECTION 2 IN THE BEGINNING OF THE AGREEMENT, DOESN'T
THAT ALSO SPELL THAT SAME PRINCIPLE OUT IN MORE DETAIL?
A YES. WE ACTUALLY SPENT A CONSIDERABLE PERIOD
OF TIME REACHING AN AGREEMENT ON THESE BASIC PRINCIPLES.
Q IF YOU COULD LOOK AT THE FIRST PAGE OF THE
1984 AGREEMENT. THE FIRST SECTION, SECTION 1, "PURPOSE"
STARTS OFF WITH A SENTENCE THAT SAYS "THIS AGREEMENT
INVOLVES A SERIES OF DISPUTES."
A YES.
Q DO YOU KNOW WHAT THAT REFERS TO WHEN IT
The witness: It was intended to refer to disputes between the current -- pending disputes between the FAA and the city, the Danforth Part 13 complaint, to be specific, and to ensure that the FAA would not initiate any action against the city similar to the claims made by NBAA and GAMA in their second federal lawsuit.

Q by Mr. Tachiki: Okay. And then looking at Section 4 which is on page 5, it's a settlement of legal disputes.

A did you say Section 4 on page 5?

Q Right. On page 5.

A I have it.

Q Okay. Now, it says, "This agreement serves to resolve all existing legal disputes among the parties."

Is that to resolve disputes among the city and the FAA?
A: YES.
Q: AND IT IS NOT INTENDED TO RESOLVE DISPUTES AMONG OTHER PARTIES; IS THAT CORRECT?
A: THAT'S CORRECT. THAT'S WHAT IT SAYS.
MR. TACHIJI: YOUR HONOR, I HAVE NO MORE QUESTIONS.
MR. KIRCHBAUM: IF WE COULD TAKE A BRIEF MOMENT, YOUR HONOR.
THE COURT: SURE. WE'LL TAKE A FIVE-MINUTE BREAK.
MR. KIRCHBAUM: THANKS.
(RECESS TAKEN.)
THE COURT: WE'RE BACK ON THE RECORD IN THIS MATTER.
MR. KIRCHBAUM, YOU MAY CROSS.
MR. KIRCHBAUM: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION
BY MR. KIRCHBAUM:
Q: GOOD MORNING, MR. STARK.
A: GOOD MORNING.
Q: BEFORE I GET INTO A COUPLE OF DOCUMENTS YOU DISCUSSED EARLIER AND A COUPLE OF OTHER DOCUMENTS, I JUST WANT TO MAKE SURE I UNDERSTAND THE POSITION YOU'VE TAKEN THIS MORNING CORRECTLY.
IS IT YOUR TESTIMONY THAT THE 1984 AGREEMENT DID NOT RESOLVE ANY DISPUTE BETWEEN THE SANTA MONICA
AIRPORT ASSOCIATION AND THE CITY OF SANTA MONICA?

A    YES.

Q    AND HOW DID THE COMPLAINT FILED BY THE SANTA MONICA AIRPORT ASSOCIATION AGAINST THE CITY OF SANTA MONICA RELATING TO EVICTIONS FROM VARIOUS FBO PARCELS ON THE AIRPORT GET RESOLVED?

A    ARE YOU REFERRING TO SOMETHING OTHER THAN THE COMPLAINT THAT WAS REFERRED TO IN THE LETTER THAT I WAS SHOWN?

Q    YES, SIR.

DO YOU RECALL THERE BEING A COMPLAINT BY THE SANTA MONICA AIRPORT ASSOCIATION AGAINST THE CITY OF SANTA MONICA RELATING TO EVICTIONS ON THE AIRPORT?

THE COURT:    AT WHAT TIME?

Q    BY MR. KIRSCHBAUM: PRIOR TO THE '84 AGREEMENT THAT WAS PENDING AT THAT TIME?

A    THE ONLY COMPLAINT I RECALL -- AND FRANKLY, I DON'T KNOW WHAT THE UNDERLYING SUBSTANCE OF IT IS -- THE COMPLAINT THAT MR. TACHIKI TOLD ME. I HAVE NO INDEPENDENT RECOLLECTION OF THAT.

I DO RECALL THAT THE SANTA MONICA AIRPORT ASSOCIATION WAS AGGRIEVED BY CERTAIN EVICTIONS. I CAN'T CONNECT IT TO ANY SPECIFIC COMPLAINT.

Q    DO YOU RECALL ON BEHALF OF THE CITY ENTERING INTO ANY OTHER SETTLEMENT AGREEMENTS WITH THE CITY -- WITH THE AIRPORT ASSOCIATION? IN OTHER WORDS, WERE THERE ANY OTHER SETTLEMENT AGREEMENTS BETWEEN THE CITY AND THE AIRPORT ASSOCIATION THAT AREN'T IN THE '84
1 AGREEMENT?
2 A I DON'T RECALL ANY. IF YOU SHOWED ME A DOCUMENT, IT MIGHT REFRESH MY MEMORY. I DON'T REMEMBER IT.
3 Q TURNING YOUR ATTENTION BRIEFLY TO SECTION 4 OF THE '84 AGREEMENT WHICH IS EXHIBIT 414 --
4 A THEY HAVE TAKEN MY EXHIBIT BOOKS AWAY FROM ME AND NOT BROUGHT THEM BACK. IF YOU GIVE ME A MINUTE I MIGHT BE ABLE TO FIND THEM BY NUMBER KEY.
5 Q IT'S THE LAST EXHIBIT, EXHIBIT 414.
6 A GIVE ME A MOMENT. EXHIBIT 414 IS THE AIRPORT AGREEMENT?
7 Q YES.
8 A I HAVE IT.
9 Q OKAY. COULD YOU TURN TO PAGE 5, SECTION 4, "SETTLEMENT OF LEGAL DISPUTES."
10 A I HAVE IT.
11 Q ISN'T IT TRUE, SIR, THAT IN JANUARY OF 1984, THERE WERE NO EXISTING LEGAL DISPUTES BETWEEN THE CITY AND THE FEDERAL AVIATION ADMINISTRATION?
12 A I BELIEVE THAT THE DANFORTH COMPLAINT, IT WAS STILL PENDING AT THE TIME.
13 Q BY THE DANFORTH COMPLAINT, YOU'RE REFERRING TO THE ADMINISTRATIVE COMPLAINT FILED BY DANFORTH WITH THE AVIATION ADMINISTRATION?
14 A WHAT I REFERRED TO AS THE PART 13 COMPLAINT, YES.
15 Q DID THE FAA FILE ANY ADMINISTRATIVE
COMPLAINTS AGAINST THE CITY OF SANTA MONICA?
A I DON'T BELIEVE IT DID.
Q DID THE FAA FILE ANY LAWSUITS AGAINST THE
CITY OF SANTA MONICA PRIOR TO THE '84 AGREEMENT?
A NO, IT DID NOT.

THE COURT: THE FIRST SENTENCE HERE READS: "THE
AGREEMENT SERVES TO RESOLVE ALL EXISTING LEGAL DISPUTES
AMONG THE PARTIES."

USUALLY WHEN YOU USE THAT LINE, USUALLY IT
MEANS MORE THAN TWO. FOR EXAMPLE, IN THE NEXT SENTENCE
IT SAYS:

"IN THIS CONTEXT IT CONSTITUTES A
SETTLEMENT AGREEMENT APPLICABLE TO ALL
EXISTING LITIGATION AND/OR ADMINISTRATIVE
COMPLAINTS BETWEEN THE PARTIES."

USUALLY WHEN YOU USE THE TERM "BETWEEN,"
YOU'RE USUALLY TALKING ABOUT TWO PARTIES. WHEN YOU USE
THE TERM "AMONG," THE USE OF THE TERM "AMONG" WOULD SEEM
TO SUGGEST MORE THAN TWO.

DID YOU HAVE SOMETHING IN MIND WHEN YOU
STATED "AMONG" BEFORE?

THE WITNESS: I DON'T THINK THERE'S ANY PARTICULAR
SIGNIFICANCE TO THE USE OF THE TERM "AMONG" IN THE FIRST
SENTENCE AND THE USE OF THE TERM "BETWEEN" IN THE SECOND
SENTENCE.

THE COURT: ALL RIGHT. GO AHEAD, MR. KIRSCHBAUM.
Q BY MR. KIRSCHBAUM: WAS THERE ANY
SIGNIFICANCE TO THE FACT THAT YOU DIDN'T SPECIFICALLY
IDENTIFY LITIGATION OR ADMINISTRATIVE COMPLAINT WITHIN THIS AGREEMENT?

A I DON'T THINK THERE'S ANY PARTICULAR SIGNIFICANCE TO THAT.

Q YOU DID DRAFT THIS AGREEMENT; CORRECT?

A MR. CIRRUZI AND I DRAFTED THIS AGREEMENT, YES.

Q YOU HAD AN OPPORTUNITY TO Amend OR CORRECT ANY PORTION OF THIS AGREEMENT THAT THE CITY DIDN'T AGREE WITH; CORRECT?

A CERTAINLY.

Q LET ME INITIALLY DIRECT YOUR ATTENTION TO WHAT'S BEEN MARKED AS EXHIBIT 450. THAT WILL BE FOUND IN VOLUME NO. 9.

A IT SAYS -- THIS IS THE SECOND AMENDED COMPLAINT IN WHAT I REFER TO AS THE JET BAN LAWSUIT.

Q YES. YOU'VE SEEN THIS BEFORE?

A LET ME LOOK AT IT, AND I'LL DETERMINE IF I HAVE. IT'S NOT FILE STAMPED, BUT IT APPEARS TO BE THE LAST PLEADING FILED BY THE SANTA MONICA AIRPORT ASSOCIATION IN THAT CASE, YES.

Q OKAY. AND YOU CAN TELL BY THE CASE NUMBER ON THE RIGHT SIDE OF THE CAPTION THAT THIS WAS FILED IN 1977; CORRECT?

A YES. I RECOGNIZE THE CASE NUMBER.

Q OKAY.

A THE ORIGINAL COMPLAINT WAS FILED IN 1977.

Q RIGHT. AND REFER IF YOU WOULD --
A SO IS THE SECOND AMENDED COMPLAINT, FOR THAT
MATTER.

Q DO YOU REMEMBER IF THE SECOND AMENDED
COMPLAINT WAS THE OPERATIVE COMPLAINT AT THE TIME OF THE
TRIAL?

A I THINK IT WAS.

Q REFER TO A FEW DOCUMENTS EARLIER, TO
EXHIBIT 447.

A YES.

Q OKAY. THIS IS THE CITY'S ANSWER TO THAT
COMPLAINT; CORRECT?

A NO, IT'S NOT. THIS IS THE CITY'S ANSWER TO
THE ORIGINAL COMPLAINT.

Q OKAY. DID THE CITY SUBMIT AN AMENDED ANSWER
TO THE SECOND AMENDED COMPLAINT?

A IT MAY HAVE. THIS DOCUMENT WAS PREPARED BY
MR. KNICKERBOCKER AND MY PREDECESSOR, HIS ASSISTANT,
ATTORNEY MR. STRICKMAN. I DIDN'T DRAFT THIS PARTICULAR
ANSWER. I THINK -- BUT ALTHOUGH I DON'T HAVE AN
INDEPENDENT RECOLLECTION THAT I PERSONALLY DRAFTED IT, I
THINK THAT THEY WOULD HAVE FILED AN ANSWER TO THE SECOND
AMENDED COMPLAINT.

I GOT INTO THE CASE WHEN WE WERE DOING THE
PRETRIAL STATEMENT WHICH SUPERSEDED THE PLEADINGS. SO
THE DETAILS IS NOT IN MY MEMORY.

Q OKAY. SO YOU DON'T HAVE ANY DOUBT IN YOUR
MIND THAT THE CITY OF SANTA MONICA ACTUALLY ANSWERED THE
COMPLAINT, DO YOU?
A: We certainly did at some point in time.

Q: Let me direct your attention to the bottom of the second page of this answer to the complaint at line 25 where it reads:

"Defendants further allege that Plaintiff SMAA herein seeks to assert and define rights under contracts and agreements to which it is not a party and therefore the SMAA lacks standing as a plaintiff in this action."

Do you see that?

A: Yes.

Q: You don't believe that the city modified its position at any time prior to trial to withdraw that allegation, do you?

A: No, I don't.

Q: Okay. The city contended through trial that the airport association, the same party that's here today, that in 1977, the airport association lacked standing because it wasn't a party to the agreements it was trying to enforce; correct?

A: I think that's an accurate statement, sir.

Q: Okay.

A: I should tell you that without actually reading the pleadings, which I haven't done, I don't have any memory about whether we were referring to the leases between the city and the airport operators or the grant agreements between the city and the FAA or both.
Q  LET'S TAKE A LOOK AT ONE REAL QUICK. REFER,
2 IF YOU WOULD, TO EXHIBIT 100. THAT'S IN VOLUME 2.
3 A  OH, I HAVE THE DOCUMENT.
4 Q  OKAY. THIS IS WHAT'S BEEN COMMONLY REFERRED
5 TO AS THE 1948 INSTRUMENT OF TRANSFER, IS IT NOT?
6 A  ON THE FACE OF IT, IT LOOKS LIKE THE 1948
7 INSTRUMENT OF TRANSFER, YES.
8 Q  AND THIS IS THE DOCUMENT BY WHICH THE FEDERAL
9 GOVERNMENT GRANTED BACK THE SANTA MONICA MUNICIPAL
10 AIRPORT TO THE CITY OF SANTA MONICA FOLLOWING
11 WORLD WAR II; CORRECT?
12 A  THAT'S CORRECT. I THINK THERE'S A DOCUMENT
13 CALLED AN INSTRUMENT OF REVERTER, TOO. BUT THIS IS
14 BASICALLY HOW THEY DID IT, YES.
15 Q  OKAY. AND YOU UNDERSTOOD THAT WITHIN THIS
16 DOCUMENT, IN FACT, SPECIFICALLY ON PAGE 4 OF THIS
17 DOCUMENT WHICH HAS A BATES NUMBER ON THE LOWER
18 RIGHT-HAND SIDE OF 5048, SPECIFICALLY THE THIRD
19 PARAGRAPH FROM THE BOTTOM, THAT THIS DEED OF TRANSFER
20 IMPOSED A COVENANT AND RESTRICTION THAT RAN WITH THE
21 LAND, THAT THE LAND SUBJECT TO THIS DEED BE USED AS AN
22 AIRPORT IN PERPETUITY; CORRECT?
23 A  I UNDERSTAND THAT THAT'S WHAT IT SAID. I
24 ALSO FURTHER UNDERSTAND THAT THERE WAS SOME CONTROVERSY
25 ON THE PART OF THE CITY AS TO WHETHER IT COVERED TO
26 MAINTAIN THE AIRPORT FOR AIRPORT PURPOSES AND PERPETUITY
27 WAS ENFORCEABLE. THAT WAS A MATTER OF SOME DISCUSSIONS
28 BETWEEN US AND THE FEDERAL GOVERNMENT FROM TIME TO TIME.
Q THAT WASN'T EVER RESOLVED, WAS IT?
A SPECIFICALLY? NO, IT WAS RENDERED MOOT.
Q RIGHT. THIS 1948 INSTRUMENT OF TRANSFER WAS
ACCEPTED BY THE CITY; CORRECT?
A IN 1948?
Q YES.
A I BELIEVE -- I'M QUITE SURE IT WAS. IT BEARS
THE SIGNATURE OF SOME CITY OFFICIAL ON IT.
Q RIGHT. IF YOU WOULD REFER TO EXHIBIT 338.
A THAT WOULD BE IN VOLUME 6, WOULDN'T IT?
Q THAT WOULD BE VOLUME 6.
A IN FACT, SIR, IS THIS NOT THE RESOLUTION OF
THE CITY OF SANTA MONICA ACCEPTING THE 1948 INSTRUMENT
OF TRANSFER?
A YES, IT IS.
Q AND WAS IT YOUR UNDERSTANDING THAT PART OF
THE BASIS FOR THE AIRPORT ASSOCIATION'S LAWSUIT IN
1977 --
LET ME RESTATE THE QUESTION SO I HAVE YOUR
FULL ATTENTION.
ISN'T IT ACCURATE TO SAY THAT THE 1948
INSTRUMENT OF TRANSFER WAS AT LEAST IN PART THE BASIS
FOR THAT SANTA MONICA AIRPORT ASSOCIATION'S SUIT IN 1977
SEEKING TO DO, AMONG OTHER THINGS, OVERTURN THE JET BAN?
A I DON'T HAVE A DISTINCT RECOLLECTION OF THAT.
I DO RECALL THAT THE MEMBERS OF THE SANTA MONICA AIRPORT
ASSOCIATION CONTENDED THAT THE CITY WAS OBLIGATED BY
VIRTUE OF THE INSTRUMENT OF TRANSFER TO KEEP THE AIRPORT
OPEN IN PERPETUITY.

THE EXTENT TO WHICH THAT CONTENTION ENTERED INTO THE ISSUES IN THE 1977 LITIGATION, I'M NOT QUITE SO SURE OF. THEY DIDN'T ENTER INTO JUDGE HILL'S FINAL DECISION OR THE COURT OF APPEALS' DECISION. BUT WITHOUT PARSENG THROUGH ALL THE PLEADINGS, I WOULDN'T BE IN A POSITION TO SAY YES OR NO AS TO WHETHER THAT WAS AN ALLEGATION IN THE LAWSUIT.

Q OKAY. AND WHEN THE TRIAL COURT RENDERED ITS DECISION IN THE 1977 SANTA MONICA AIRPORT ASSOCIATION CASE, THE CITY TOOK THAT DECISION UP ON APPEAL; CORRECT?

A I BELIEVE BOTH PARTIES APPEALED.

Q AND PRIOR TO THE RULING BY THE APPELLATE COURT, DID THE CITY TAKE ANY OTHER ACTION WITH RELATION TO REGULATION AT THE AIRPORT?

A DO YOU MEAN BETWEEN THE TIME OF THE TRIAL COURT DECISION AND THE APPELLATE COURT DECISION? IS THAT WHAT YOU'RE ASKING?

Q YES.

A YES, IT DID.

Q WHAT DID THE CITY DO?

A THE CITY -- THE CITY SHORTLY AFTER THE TRIAL COURT DECISION ADOPTED AN ORDINANCE THAT LOWERED THE SINGLE EVENT DECIBEL LIMIT FROM 100 DECIBELS TO 85 DECIBELS.

Q THAT WAS WITHIN DAYS? WEEKS?

A DAYS OF THE TRIAL COURT DECISION, I THINK. NO LONGER THAN WEEKS.
Q AND WITHIN A MONTH OF LOWERING THE NOISE LEVEL TO 85 DECIBELS, THAT'S WHEN GAMA, NBAA, AND GUNNELL FILED THEIR SUIT FOR PRELIMINARY INJUNCTION; CORRECT?
A NO LONGER THAN TWO MONTHS. I THINK PROBABLY WITHIN A MONTH.
Q AND THEY RECEIVED A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY RE-INJUNCTION; CORRECT?
A I DON'T KNOW IF THEY GOT A TEMPORARY RESTRAINING ORDER, BUT THEY GOT A PRELIMINARY INJUNCTION.
Q OKAY. THE ORDINANCE WAS NEVER ENFORCED AT 85 DECIBELS; CORRECT?
A TO BE BLUNT ABOUT IT, SIR, JUDGE HILL MADE IT UNMISTAKABLY CLEAR THAT THE CITY'S ORDINANCE, THE 85 DECIBEL ORDINANCE, WAS NOT GOING TO BE UPHELD, AND WE COULDN'T ENFORCE IT.
I BELIEVE THAT SHORTLY AFTER THAT -- I'M NOT QUITE SURE HOW LONG -- THE CITY, IN ORDER TO HAVE SOMETHING IN PLACE, REINSTATED THE 100 DECIBEL LIMIT.
Q REFER, IF YOU WOULD, TO EXHIBIT 241.
A DO YOU KNOW WHERE?
Q THAT IS IN VOLUME 4.
A I SEE THE EXHIBIT.
Q OKAY. I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE LAST TWO PARAGRAPHS OF THE FIRST PAGE OF THIS EXHIBIT.
MR. TACHIKI: YOUR HONOR, I WOULD OBJECT. THERE
IS NO FOUNDATION FOR THIS. IT DOESN'T APPEAR TO BE A
FINAL DOCUMENT.

THE COURT: WHICH EXHIBIT IS THIS?

THE WITNESS: IT IS EXHIBIT 241. IT SAYS "AIRPORT
NOISE REGULATION" ON IT. I HAVEN'T GOTTEN ALL THE WAY
THROUGH IT TO SEE IF IT'S SIGNED.

I'VE READ THROUGH THE DOCUMENT.

THE COURT: WHAT'S THE OBJECTION?

MR. TACHIKI: THERE IS NO FOUNDATION. IT IS NOT
CLEAR WHAT THIS DOCUMENT IS BECAUSE THERE'S A COMPLETE
BLANK ON THE FIRST PAGE. I'M NOT SURE MR. STARK CAN
TESTIFY ABOUT THIS.

THE COURT: CAN YOU TRY TO LAY A FOUNDATION.

MR. KIRSCHBAUM: SURE.

Q DO YOU KNOW WHAT THIS DOCUMENT IS?

A I KNOW WHAT THIS DOCUMENT PURPORTS TO BE, BUT
WHAT I DON'T KNOW IS WHETHER THIS IS A FINALLY
AUTHORIZED DOCUMENT OR A DRAFT.

Q WHAT DOES IT PURPORT TO BE?

A IT PURPORTS TO BE A NOISE REGULATION THAT
IMPLEMENTS, I THINK THE SD, THE 85 DECIBEL LIMIT.

THE COURT: WHAT IS THIS BEING OFFERED FOR?

MR. KIRSCHBAUM: ESSENTIALLY JUST THE TWO
PARAGRAPHS AT THE BOTTOM OF THE FIRST PAGE. JUST WANTED
TO ASK HIM IF THAT ACCURATELY SETS FORTH THE CHAIN OF
EVENTS.

THE WITNESS: MAY I LOOK AT THEM?

MR. KIRSCHBAUM: YOU SURE CAN.
THE COURT: YOU CAN ASK HIM THAT.

THE WITNESS: ORDINANCE NO. 1137 WHICH IS WHAT IS REFERRED TO IN THE FIRST PARAGRAPH IS THE 85 DECIBEL ORDINANCE. AND THAT IS, IN FACT, ACCURATELY REFERRED TO IN THE LITIGATION THAT I SPOKE OF EARLIER, THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION VERSUS THE CITY. THAT'S THE 1979 LITIGATION.

THE PREDECESSOR, THE 10105 IS, I THINK, BOTH THE JET BAN AND THE 100 SENEL ORDINANCE, AND THAT'S THE ONE THAT WAS CHALLENGED IN THE DECISION BY JUDGE HILL. IT WAS TAKEN UP ON APPEAL.

IS THAT WHAT YOU WANTED TO KNOW?

Q BY MR. KIRSCHBAUM: YES.

SO WOULD YOUR ANSWER TO THE QUESTION BE THAT THE TWO PARAGRAPHS AT THE BOTTOM OF THE FIRST PAGE ACCURATELY SET FORTH THE SCENARIO?

A THEY REFLECT THE FEDERAL LAWSUITS WITH THE CITY WITH RESPECT TO ITS NOISE ORDINANCES, YES.

Q NEXT, I WOULD LIKE YOU TO REFER TO EXHIBIT 458, WHICH IS IN VOLUME 9.

A OKAY. DID YOU SAY 458?

Q YES.

A I HAVE THE DOCUMENT.

Q OKAY. NOW, DOES THIS REFLECT THE CITY OF SANTA MONICA'S EFFORTS TO DETERMINE WHETHER OR NOT CLOSING THE AIRPORT MIGHT VIOLATE THE '48 INSTRUMENT OF TRANSFER THAT WE'VE JUST TALKED ABOUT, OR THE 1965 LEASE WITH THE FAA OVER THE AIR TRAFFIC CONTROL TOWER?
YES. WHEN I WAS -- DURING THE PERIOD OF TIME WHEN I WAS ACTING CITY ATTORNEY, THE CITY COUNCIL, ON MY RECOMMENDATION, OBTAINED THE LAW FIRM OF FORMER JUSTICE ABE FORTIS TO WRITE US AN OPINION ON THE CITY'S LEGAL ABILITY TO CLOSE THE AIRPORT, CONTRARIWISE, ITS OBLIGATION TO KEEP THE AIRPORT OPEN. AND THAT'S WHAT THIS LETTER FROM JOSEPH BURL, WHO'S AN OLD LAW SCHOOL CLASSMATE OF MINE, WHO WORKED WITH JUSTICE FORTIS PURPORTS TO BE.

Q OKAY. TURN TO THE NEXT EXHIBIT 460.

A MAY I CLARIFY MY ANSWER TO THE PRIOR QUESTION FIRST?

THE COURT: GO AHEAD.

MR. KIRSCHBAUM: OKAY.

THE WITNESS: I DON'T BELIEVE THE LETTER FROM MR. BURL DISCUSSES THE INSTRUMENT OF TRANSFER. I THINK IT DISCUSSES THE AIRPORT GRANTS AND THE LEASES, BUT IT DOES NOT, AT LEAST FROM MY LEAFING THROUGH IT, APPEAR TO DISCUSS THE INSTRUMENT OF TRANSFER.

Q BY MR. KIRSCHBAUM: OKAY. BUT IF YOU LOOK AT PAGE 10 OF THAT EXHIBIT, WE'RE NOW REFERRING AGAIN BACK TO EXHIBIT 458, HE CONCLUDES IN THE LAST PARAGRAPh, DOES HE NOT, THAT CLOSING THE AIRPORT WOULD VIOLATE AT LEAST THAT LEASE AGREEMENT?

A THAT'S PRECISELY WHAT HE CONCLUDES, YES.

Q ALL RIGHT. REFERRING NOW TO EXHIBIT 460 WHICH IS THE FOLLOWING EXHIBIT, IF YOU WOULD?

A YES. THE LOGO AT THE TOP IS CUT OFF, BUT
FROM THE FACT THAT IT SAYS "WESTERN REGION," I WOULD GATHER IT'S FROM THE FAA, THE FEDERAL ADMINISTRATION AVIATION ADMINISTRATION, OF THE WESTERN REGION.

Q IF YOU TURN TO THE SPECIFIED PAGE, IT'S SIGNED BY DEWITT LAWSON, D-E CAPITAL W-I-T-T. YOU KNOW HIM TO BE THE REGIONAL COUNSEL OF --

A I KNOW MR. LAWSON. HE WAS THE REGIONAL COUNSEL OF FAA FOR A LONG TIME.

Q RIGHT. HAVE YOU SEEN THIS LETTER BEFORE?

A YES, BUT NOT IN A WHILE.

Q OKAY. THIS LETTER EXPRESSES THE FAA'S CONCERN ABOUT THE CITY EVICTING TENANTS FROM THE AIRPORT; CORRECT?

A YES.

Q AND THE VERY FIRST SENTENCE: "WE HAVE BEEN INFORMED THAT THE CITY COUNCIL HAS DIRECTED THE CITY OFFICIAL TO ISSUE TENANCY TERMINATIONS TO VIRTUALLY ALL THE BUSINESS TENANTS"; CORRECT?

A THAT'S CORRECT, WHAT IT SAYS.

Q DO YOU KNOW HOW THE FAA WAS INFORMED OF THIS CIRCUMSTANCE?

A DO I KNOW?

Q YES.

A NO. I HAVE A FAIRLY GOOD IDEA OF WHO COMPLAINED TO THEM.

Q WHO COMPLAINED TO THEM?

A I BELIEVE THAT THE AIRPORT ASSOCIATION COMPLAINED TO THEM. I BELIEVE THAT THE INDIVIDUAL FIXED
BASE OPERATORS AND BUSINESS OWNERS COMPLAINED TO THEM, AND I THINK THAT THE NATIONAL BUSINESS AVIATION ADMINISTRATION COMPLAINED TO THEM.

Q DID ANY OF THESE COMPLAINTS TAKE THE FORM OF LITIGATION?

A I'M NOT SURE, SIR. NOT BY THE FAA. THERE WERE VARIOUS SUITS BY INDIVIDUAL LESSEES, AND I RECALL A STATE COURT -- I DON'T ACTUALLY RECALL THE STATE -- WHETHER THE ASSOCIATION FILED A STATE COURT SUIT. THERE WERE SUITS FILED BY VARIOUS LESSEES.

I THINK MR. KNICKERBOCKER, AFTER HE CEASED BEING CITY ATTORNEY, FILED A LAWSUIT AGAINST THE CITY, BUT I DON'T RECALL WHO IT WAS ON BEHALF OF. SOME AVIATION INTEREST.

Q DO YOU KNOW THAT MR. KNICKERBOCKER WAS REPRESENTING THE SANTA MONICA AIRPORT ASSOCIATION AFTER HE LEFT THE SANTA MONICA CITY ATTORNEY'S OFFICE?

A YES. THE AIRPORT ASSOCIATION?

Q YES, SIR.

A I'M NOT ENTIRELY SURE. I THINK HE WAS. I KNOW HE HAD HIS OFFICES AT THE AIRPORT FOR A WHILE. AND I KNOW HE HAD AIRPORT -- AT LEAST AIRPORT BUSINESS CLIENTS. HE MAY HAVE REPRESENTED THE ASSOCIATION.

Q TURN TO EXHIBIT 464, IF YOU WOULD.

A I HAVE IT.

Q IN FACT, DIDN'T YOU WRITE THIS SPECIAL STAFF REPORT?

A YES, I DID.
Q AND WE CAN TELL THAT --
A I SHOULD POINT OUT THAT WHERE IT SAYS, "CA," WHICH IS CITY ATTORNEY, IT SAYS, "RMM." THAT WOULD BE ROBERT MEYERS WHO IS THE CITY ATTORNEY AND THEN MY INITIALS AFTER THAT WHICH INDICATED I WAS THE DRAFTER OF IT. BUT MR. MEYERS HAD INPUT INTO THE FINAL PRODUCT.
Q RIGHT. AND AT THE END OF THE DOCUMENT WHERE IT INDICATES WHO PREPARED THIS DOCUMENT IT INDICATES IT'S PREPARED BY MR. MEYERS AND YOURSELF; CORRECT?
A YES.
Q WE CAN TELL THAT FROM BOTH THAT PREPARED BY PAGE AS WELL AS THE INITIALS ON THE FIRST PAGE?
A YES, YOU CAN.
Q OKAY. AND THE SECOND PARAGRAPH OF THE FIRST PAGE, DOES THAT ACCURATELY SET FORTH THAT THE CITY COUNCIL'S PRIMARY GOAL WAS TO PUT THE AIRPORT PROPERTY TO ITS HIGHEST AND BEST USE INCLUDING MAXIMUM REVENUE?
A I THINK THAT'S AN ACCURATE STATEMENT. I BELIEVE WE DERIVED THAT DIRECTLY FROM STATEMENTS OF THE CITY COUNCIL.
Q RIGHT. AND IT ALSO SETS FORTH THAT IF CONTINUED, AIRPORT USE IS DETERMINED TO BE INCOMPATIBLE WITH THE GOAL OF MAXIMUM REVENUE, THAT THE CITY SHOULD REMOVE THE LEGAL OBSTACLES TO CLOSING THE AIRPORT; CORRECT?
A THAT IS CORRECT.
Q OKAY. AND THIS OCCURRED IN -- THIS DOCUMENT IS DATED JUNE 23RD, 1981; CORRECT?
A YES.
Q THAT IS SOME SEVEN MONTHS AFTER THE MEMO FROM MR. BURL ADVISING THE CITY THAT IT'S HIS BELIEF THEY WOULD BE IN BREACH AT LEAST OF THE LEASE AGREEMENT WITH THE FAA IF THEY TRIED TO CLOSE THE AIRPORT; CORRECT?
A YES, IT IS.
Q AND IF YOU'LL LOOK THROUGH THE FIRST TEN OR ELEVEN PAGES OF THIS DOCUMENT, THAT PRETTY WELL SETS FORTH A DETAILED CHRONOLOGICAL HISTORY OF EVENTS AT THE AIRPORT AS THEY SPECIFICALLY RELATE TO THE DEVELOPMENT PROBLEMS AND THE ISSUES RELATED TO NOISE; CORRECT?
A I BELIEVE THAT'S THE FAIR SUMMARY OF WHAT IT DOES.
Q AND IT'S SPECIFICALLY ON THE NINTH PAGE OF THIS DOCUMENT, PARAGRAPH NO. 5, TALKS ABOUT THE LOCAL AIRPORT ASSOCIATION.
DO YOU SEE THAT?
A I MUST HAVE THE WRONG PAGE.
Q I'VE NUMBERED THEM CONSECUTIVELY. IT'S THE NINTH PAGE. THERE'S A PARAGRAPH NUMBERED FIVE ON THAT PAGE. IT STARTS WITH A, B, C, D, E AT THE TOP OF THAT PAGE.
A I'M SORRY. I DON'T -- THE NINTH PAGE FROM THE BEGINNING?
Q YES, SIR.
THE COURT: WHAT'S AT THE TOP OF IT?
MR. KIRSCHBAUM: THOSE SMALL LETTERS A, B, C, D, AND E FROM PARAGRAPH 4 ON THE PRECEDING PAGE.
THE WITNESS: I HAVE THE PAGE.

MR. KIRSCHBAUM: OKAY.

THE WITNESS: THE LOCAL AIRPORT. I HAVE IT. IT
SAYS THE LOCAL AIRPORT ASSOCIATION LATER JOINED BY
NATIONAL AVIATION INTEREST, DOT, DOT, DOT.

Q BY MR. KIRSCHBAUM: RIGHT. THAT'S MEANT TO
REFER TO SANTA MONICA AIRPORT ASSOCIATION; CORRECT?

A YES, IT IS.

Q AND THEN IN PARAGRAPH 6 AND 7 BELOW THAT, IT
DISCUSSES THE FINDINGS OF THAT CASE, THAT IT WAS -- THE
JET BAN WAS FOUND TO BE IMPERMISSIBLE AND THAT THE CITY
COUNCIL THEN LOWERED THE SENEL TO 85; CORRECT?

A THAT IS CORRECT.

Q AND IF YOU TURN TO THE PAGE THEREAFTER, THE
TENTH PAGE, THE HEADING NO. F TALKS ABOUT THE CURRENT
CONTROVERSY.

A YES.

Q THAT WAS THE CONTROVERSY THAT WAS CURRENT IN
JUNE OF 1981; CORRECT?

A PRESUMABLY. IF I COULD GLANCE AT THAT, I
COULD VERIFY IT.

THE COURT: WHEN WE'RE TALKING ABOUT THE 1981,
WE'RE TALKING ABOUT THE NBAA DISPUTE?

MR. KIRSCHBAUM: I'M SORRY. SAY THAT AGAIN, YOUR
HONOR.

THE COURT: I WANT TO MAKE SURE I'M KEEPING THIS
STRAIGHT.

WHEN YOU SAY THE 1981 DISPUTE, THAT'S
IN Volving the NBAa; Right?

MR. KIRSCHBAUM: NO, THAT'S NOT INVOLVING -- THE CURRENT CONTROVERSY AS EXPRESSED IN EXHIBIT 464 IS SUBSEQUENT TO NBAA'S INJUNCTION HAVING BEEN GRANTED.

THE WITNESS: THEN I THINK MY -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT THE COLLOQUY.

MR. KIRSCHBAUM: THAT'S OKAY.


THE CONTROVERSY THAT IS REFERRED TO IN THIS STAFF REPORT, I THINK, PROBABLY KICKS UP ON THE NOISE CONTROVERSY THAT'S REFERRED TO IN THE PRECEDING PAGES, BUT REFERS TO A SERIES OF ACTIONS THAT THE CITY TOOK WITH RESPECT TO THE DESIRE TO INCREASE REVENUE FROM THE AIRPORT AND DECREASE AIRPORT OPERATIONS, INCLUDING THE EVICTION OR NON-RENEWAL OF CERTAIN TENANCIES. THAT IS WHAT THIS REFERS TO AND THE VARIOUS SUBJECTS IN IT.

Q BY MR. KIRSCHBAUM: LET ME JUST SEE IF I CAN DEFINE THAT THOUGHT JUST A LITTLE BIT.

THE CURRENT CONTROVERSIES EXPRESSED IN THIS STAFF REPORT HAS NOTHING AT ALL TO DO WITH THE NBAA LAWSUIT; CORRECT? THIS IS JUST ABOUT THE REVENUE THAT THE CITY WOULD DERIVE FROM CLOSING THE AIRPORT AND PUTTING IT TO A DIFFERENT USE?

A WELL, I THINK --

Q ISN'T THAT TRUE?
A NOT TO QUIBBLE. THE -- WHAT IS STATED AS THE CURRENT CONTROVERSY DOES, AS YOU SAY, REFER TO THE CITY'S DESIRE TO DERIVE GREATER ECONOMIC USE FROM THE AIRPORT AND SHUT DOWN OR DECREASE AT A MINIMUM AVIATION OPERATIONS.

THE PRECEDING PARAGRAPH TALKS ABOUT THE LAWSUIT WHICH IS ALSO PENDING, I WOULD THINK, OF THESE VARIOUS ACTIONS AS A WHOLE. THEY'RE DESCRIBED -- THE LEASE THINGS -- ACTIONS ARE DESCRIBED IN ONE SECTION OF THE REPORT, AND THE NBAA LAWSUIT IS IN THE PRECEDING SECTION.

I THINK IF YOU WERE USING A LICENSE THEY BOTH WOULD BE PART OF THE CURRENT CONTROVERSY.

THE COURT: HOLD ON A MINUTE. OKAY. I JUST HAVE TO MAKE SURE I UNDERSTAND THIS.

YOU'RE TALKING ABOUT CURRENT CONTROVERSY HERE. AND IT HAS -- THE CONTROVERSY IS STEMMING FROM THE CITY'S DESIRE TO SHUT DOWN AIRPORT OPERATIONS OR AT LEAST CUT BACK THE AVIATION USE OF THE AIRPORT.

THAT'S -- IS THAT THE WHOLE -- FIRST, THIS WAS JUST ONE ASPECT OF THE CONTROVERSY YOU'RE DISCUSSING?

THE WITNESS: I'M SEEING IF I CAN ACCURATELY, YOU KNOW, ASSESS THE ANSWER IN A CLEAR AND UNDERSTANDABLE WAY.

THE COURT: LET ME. THEN YOU'RE TALKING ABOUT -- ARE YOU ALSO DISCUSSING THE CONTROVERSY BETWEEN THE NBAA ALSO HERE AS WELL?

THE WITNESS: TO THE EXTENT THAT THE NOISE
ORDINANCE, THE CONTROVERSY WITH THE NBAA IN ITS ORIGINAL FORM WAS OVER THE NOISE ORDINANCE THAT WAS PASSED AFTER THE CITY -- THE JET BAN WAS NOT VALIDATED BY THE TRIAL COURT. THAT'S WHAT THE LAWSUIT WAS ABOUT.

THERE WERE DISCUSSIONS ABOUT WHETHER THAT LAWSUIT WOULD HAVE MEANT EXPANDED HAD IT BEEN ACTIVATED.

IT WAS NEVER ACTIVATED.


THE CITY WAS MOTIVATED TO CLOSE THE AIRPORT FOR TWO REASONS: ONE WAS, TO BE FRANK ABOUT IT, TO FAVOR THE NEIGHBORS WHO WERE AGGRIEVED WITH AIRPORT NOISE BY REDUCING THE NOISE TO ITS ABSOLUTE MINIMUM, I.E., NOTHING BY SHUTTING THE AIRPORT DOWN. AND TWO WAS TO DERIVE MONEY FOR THE CITY IN THE WAKE OF PROPOSITION 13.

THE CITY HAD DUAL MOTIVATIONS HERE. IF THE CITY WAS UNABLE TO CLOSE THE AIRPORT -- AS YOU CAN SEE, THE LEGAL OPINION COMING FROM BOTH OUR OFFICE AND OUR OUTSIDE COUNSEL WAS THAT AT A MINIMUM IT WOULD BE THE YEAR 2015 UNTIL THE AIRPORT COULD BE CLOSED AND THAT'S EVEN ASSUMING THAT THE INSTRUMENT OF TRANSFER IN PERPETUITY TO KEEP THE AIRPORT OPEN, IF WE HAD TO KEEP THE AIRPORT OPEN.

WE HAD TWO GOALS. ONE -- AGAIN, ONE WAS TO MAKE AS MUCH MONEY AS WE COULD FROM IT, AND TWO, TAKE
THE COURT: YEAH. THAT DOES IT.

Q  BY MR. KIRSCHBAUM: WHILE THE NOISE PROBLEM AS A WHOLE WAS CERTAINLY A PART OF THE CITY'S MOTIVATION TO CLOSE THE AIRPORT, YOU WOULD AGREE, THOUGH, WOULD YOU NOT, THAT IT'S NOT REFERENCED IN WHAT'S TERMED THE CURRENT CONTROVERSY IN THIS DOCUMENT?

A  IT IS NOT DIRECTLY MENTIONED IN THAT SECTION OF THE DOCUMENT EXCEPT INSOFER AS THERE IS A REFERENCE TO THE AFFIRMANCE OF JUDGE HILL'S DECISION IN THE LAST PARAGRAPH OF THAT SECTION.

Q  WELL, WAIT A MINUTE. THAT AFFIRMANCE OF JUDGE HILL'S RULING WAS NOT AN AFFIRMANCE OF THE NBAA'S PRELIMINARY INJUNCTION. THAT WAS AN AFFIRMANCE OF THE SANTA MONICA AIRPORT ASSOCIATION '79 CASE UPHOLDING THE JET BAN; CORRECT?

A  NO. YOU ALMOST HAD IT RIGHT. IT'S AN AFFIRMANCE OF JUDGE HILL'S DECISION UPHOLDING ALL THE OTHER REGULATIONS EXCEPT THE JET BAN.

Q  OKAY. IT LET STAND JUDGE HILL'S DECISION WHETHER YOU WANT TO VIEW IT UPHOLDING FOR AND INVALIDATING ONE. HOWEVER YOU WANT IT LOOK AT THAT?

A  IT WAS THE 1979 JUDGE HILL'S DECISION THAT WAS AFFIRMED, YES.

Q  IT HAD NOTHING TO DO WITH THE NBAA; CORRECT?
A  THE NBAA SUIT WAS INITIALLY PROMPTED BY THE
ORDINANCE THAT REPLACED ESSENTIALLY THE JET BAN BY
ADOPTING A LOWER SINGLE EVENT DECIBEL LIMIT.
Q  I'M NOT MEANING TO SUGGEST THAT ANY OF THESE
LAWSUITS ARE NECESSARILY INDEPENDENT VARIABLES OF ONE
ANOTHER, BUT YOU WOULD AGREE, SIR, WOULD YOU NOT, THAT
IS LATER DOWN, THOUGH, IN THAT CHAIN FROM THE NINTH
CIRCUIT'S UPHOLDING THE SANTA MONICA AIRPORT ASSOCIATION
DECISION?
A  I WOULDN'T DISAGREE WITH THAT
CHARACTERIZATION PARTICULARLY, NO.
Q  AND WOULD YOU ALSO AGREE WITH ME, SIR, THAT
AT THE TIME IN JUNE OF 1981, THE CITY WAS NOT
CONSIDERING SCALING BACK AIRPORT OPERATIONS, THEY WERE
LOOKING AT CLOSING THE AIRPORT ALTOGETHER; CORRECT?
A  I'M NOT SURE I WOULD AGREE WITH THAT.
Q  YOU THINK THEY WERE TRYING TO SCALE BACK
OPERATIONS?
A  MY UNDERSTANDING IS THAT THE CITY WAS TRYING
to do whatever it legally could do. I BELIEVE THERE WAS
A RECOGNITION CERTAINLY AMONG THE CITY'S STAFF AND MOST
LIKELY AMONG THE CITY MEMBERS OF THE CITY COUNCIL THAT
BECAUSE IT WAS PROBABLE THAT WE WOULD NOT BE ABLE TO
CLOSE THE AIRPORT FOR A NUMBER OF YEARS, THAT IT WAS A
PRUDENT THING TO DO TO SCALE BACK THE AIRPORT
OPERATIONS.
Q  WELL, TURN TOWARDS THE BACK OF THIS DOCUMENT.
I PROBABLY SHOULD HAVE PUT PAGE NUMBERS HANDWRITTEN ON
THIS DOCUMENT, BUT I DIDN'T WANT TO DESTROY THE INTEGRITY.

IF THE PAGE TOWARDS THE END WHERE THREE -- WITH YOUR NAME ON IT, WHERE IT SAYS "PREPARED BY ROBERT MEYERS, SHANE STARK," TURN TO THE TWO PAGES IN FRONT OF THAT WHERE THE TOP SENTENCE ON THAT PAGE SAYS "SIDE OF THE RUNWAY."

A I HAVE THE PAGE.

Q OKAY. AND THIS DISCUSSES A SPECIFIC PLAN FOR DEVELOPING THE AIRPORTS; CORRECT?

A MAY I HAVE A MOMENT AND READ IT?

Q SURE.

A I HAVE NOW READ THE PARAGRAPH.

Q COULD YOU REPEAT THE QUESTION.

A SURE. THERE ARE PHASES SET FORTH IN THIS SECTION OF YOUR REPORT THAT ARE NUMBERED ONE THROUGH FOUR THAT TALK ABOUT THE DEVELOPMENT OF THE AIRPORT PROPERTY; CORRECT?

A WELL, TO BE SPECIFIC, WHAT IT SAYS IS THAT WE COULD DEVELOP A SPECIFIC PLAN FOR THE PROPERTY IN PHASES.

Q RIGHT.

A THEN IT GOES ONE, TWO, THREE, FOUR.

Q THEN TURN TO THE NEXT PAGE WHERE PHASE FOUR INDICATES THAT YOU'RE -- THE CITY WANTS TO DEVELOP THE ENTIRE AIRPORT PROPERTY INCLUDING THAT CURRENTLY OCCUPIED BY THE RUNWAY AND TAXIWAY; CORRECT?

A THAT'S WHAT IT SAYS, YES.
Q AND THEN UNDER RECOMMENDATIONS TO THE CITY COUNCIL, THE VERY FIRST RECOMMENDATION IS THAT THE CITY COUNCIL ADOPT THE ACCOMPANYING RESOLUTION WHICH STATES THAT THE CITY'S POLICY TO EFFECTUATE CLOSURE OF THE AIRPORT AS SOON AS POSSIBLE AND INITIATES THE PREPARATION OF THE PHASE DEVELOPMENT YOU JUST DISCUSSED; IS THAT CORRECT?

A THAT'S WHAT IT SAYS -- WELL, IT INITIATES THE PREPARATION OF A SPECIFIC PLAN, AND IN THIS CASE, THE REFERENCE TO THE GOVERNMENT CODE, I BELIEVE, MEANS THAT THIS IS A FORMAL GOVERNMENTAL PLANNING DOCUMENT RATHER THAN AN AIRPORT PLAN.

Q RIGHT. WELL, IT ATTACHES A RESOLUTION THAT RESOLVES THAT IT'S THE POLICY OF THE CITY OF SANTA MONICA TO EFFECTUATE THE CLOSURE OF THE SANTA MONICA MUNICIPAL AIRPORT AS SOON AS POSSIBLE; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND THE CITY ADOPTED THAT RESOLUTION; CORRECT?

A YES, IT DID. CITY COUNCIL DID.

THE COURT: MR. KIRSCHBAUM, WHAT I WANT TO DO IS GET BACK ON TRACK HERE. ALL THESE QUESTIONS YOU'RE GOING TO TIE UP IN TERMS OF YOUR POSITION THAT --

MR. KIRSCHBAUM: ABSOLUTELY. ABSOLUTELY. THE CITY --

THE COURT: GIVE ME AN OFFER OF PROOF AS TO WHAT KIND OF SUMMARIZING YOU'RE GOING TO WITH ALL THESE QUESTIONS?
MR. KIRSCHBAUM: SURE. SURE.

THE CITY HAS TRIED TO PORTRAY THIS AS THE AIRPORT ASSOCIATION JUST BEING SOME KIND OF DISINTERESTED SPECTATOR THAT HAD THE SAME RIGHTS AS ANY OTHER MEMBER OF THE GENERAL PUBLIC, THAT THIS WAS NOT A SETTLEMENT AGREEMENT OF OUR LITIGATION.

AND IN ORDER TO SHOW THAT IT WAS, IN FACT, NOT ONLY A SETTLEMENT OF OUR LITIGATION BUT THE PRODUCT OF OUR NEGOTIATIONS TOWARD THE END OF THAT LITIGATION, I THINK IT'S IMPORTANT FOR ME TO SHOW, AT LEAST STARTING IN THE CONTEXT OF WHERE IT STARTED IN 1979, HOW IT PROGRESSED AND HOW THE AIRPORT ASSOCIATION WAS INTRINSICALLY INVOLVED IN EVERY STEP OF THE PROCESS.

THE FACT THAT OUR CASE IN 1977, THE SAME MUNICIPAL ENTITY WAS CLAIMING YOU DON'T HAVE STANDING THEN, AND THEN 23 YEARS LATER, 24 YEARS LATER, WE'RE STILL HEARING THE SAME COMPLAINT THAT YOU GUYS STILL DON'T HAVE STANDING TO COMPLAIN ABOUT THESE SAME PROBLEMS BASED ON THE FACT THAT THERE IS AN AGREEMENT BETWEEN THE CITY AND THE FEDERAL GOVERNMENT. I THINK I NEED TO SHOW THE PROGRESS OF HOW THIS HAPPENED.

IT'S THE AIRPORT ASSOCIATION'S POSITION THAT THE FEDERAL AVIATION ADMINISTRATION WOULD NEVER HAVE BECOME INVOLVED IN SENDING SOME OF THE DOCUMENTS THAT WE'RE GOING TO SEE IN JUST A FEW MINUTES TO THE CITY SAYING, "IT'S TIME TO NEGOTIATE A RESOLUTION OR WE'RE GOING TO SUE YOU," UNTIL AFTER THEY WERE PUT ON NOTICE BY THE AIRPORT ASSOCIATION THROUGH THE FILING OF BOTH
OUR STATE COURT COMPLAINTS AND OUR ADMINISTRATIVE

COMPLAINTS.

THE WITNESS SEEMS TO REMEMBER A COMPLAINT BY
MR. DANFORTH BUT HAS TROUBLE REMEMBERING THE AIRPORT
ASSOCIATION'S COMPLAINTS. I'M GOING TO SHOW HIM THOSE
TO TRY TO REFRESH HIS RECOLLECTION.

THE COURT: ALL RIGHT. GO ON.

Q BY MR. KIRSCHBAUM: TURN, IF YOU WOULD, NOW
TO EXHIBIT 35 IN VOLUME 1.

A THIS APPEARS TO BE A MEMO FROM JIM HOYT WHO
WAS THE AIRPORT'S COMMISSIONER AS WELL AS AN AIRPORT
NEIGHBOR TO THE CITY COUNCIL.

THE COURT: I'M SORRY. WE'RE LOOKING AT WHICH
NUMBER? 55?

THE WITNESS: I HAVE 36. I'M SORRY.

Q BY MR. KIRSCHBAUM: 35. THIS IS A JULY 1981
MEMO.

THE WITNESS: YES, IT'S FROM MR. HOYT.

MR. KIRSCHBAUM: RIGHT.

Q IT TALKS ABOUT ESTABLISHING A TASK FORCE TO
DEAL WITH SOME OF THE PROBLEMS INCLUDING UTILIZATION OF
THE SOUTH SIDE OF THE AIRPORT -- CORRECT? -- AND NOISE
ABATEMENT PROGRAM?

A MAY I READ IT?

Q SURE.

A NOW I'VE READ THE MEMO.

Q OKAY. I JUST WANT TO DIRECT YOUR ATTENTION
ON PAGE 2 TO THE PORTION MARKED "AVIATION INTERESTS"
THAT INCLUDES BOTH THE SANTA MONICA AIRPORT ASSOCIATION AND THE FAA AS "AVIATION INTERESTS"; CORRECT?

A THAT'S WHAT IT SAYS.

Q LET ME NEXT DIRECT YOUR ATTENTION TO EXHIBIT 466. THAT'S ALSO IN VOLUME 9.

A THAT'S THE COMPLAINT.

Q OKAY.

A IT IS A COMPLAINT, YES.

Q DO YOU RECOGNIZE THIS? HAVE YOU SEEN IT BEFORE?

A I BELIEVE I HAVE SEEN THIS DOCUMENT BEFORE.

Q OKAY.

A I HAVEN'T READ IT IN 20 YEARS.

Q ISN'T THIS ONE OF THE PIECES OF LITIGATION THAT WAS PENDING AT THE TIME OF THE 1984 AGREEMENT?

A I DON'T KNOW THE STATUS THIS LITIGATION WAS AT THE TIME OF THE 1984 AGREEMENT. THIS SAYS A COMPLAINT FILED BY MR. KNICKERBOCKER. I GUESS THAT WAS THE NAME OF HIS FIRM AT THE TIME.

Q HE WAS A FORMER CITY ATTORNEY OF THE CITY OF SANTA MONICA; CORRECT?

A THAT'S WHO HE WAS.

Q YOU RECOGNIZE THAT IN ABOUT JULY 1981 TIME FRAME HE WAS ALSO REPRESENTING SANTA MONICA AIRPORT ASSOCIATION?

A THAT'S WHAT HE WAS DOING -- WELL, TO BE PRECISE, I'M LOOKING THROUGH THE LIST OF PLAINTIFFS, AND I RECOGNIZE THE NAMES AS SOME OF THE LESSEES AT THE
AIRPORT.

Q Including Mr. Knickerbocker himself; correct?

A Yes, he leased -- that's where he was, 200 Airport Avenue, Knickerbocker Law Firm, does 1 through 10. We used to refer to his law firm.

Q You refer to the name as Santa Monica Air Center?

A That's Mr. Barker, correct. That's Danforth. He's the fixed base operator, yes.

Q If you look on the second page, the last of the -- or the second to the last of the --

A I see Mr. Brandsen as a plaintiff, too.

Q Right. You knew Mr. Brandsen and Mr. Danforth and Mr. Barker were members of the Santa Monica Airport Association, did you not?

A I think that's a fair statement. I think Mr. Brandsen, at least, was an officer of the Association at one time.

I think Mr. Barton who said he was also a member of the association.

Q Right. If you look on page 4 of the complaint, you see Mr. Danforth listed as No. K and Barton listed as No. L; correct?

A Right. In fact, I think practically all the airport tenants except Gunnell and maybe California Aviation and Woody Duke and the Airport Association are listed as plaintiffs. There's a lot of plaintiffs in here.
Q AND IS IT YOUR TESTIMONY THAT THIS CASE WAS NOT RESOLVED BY THE '84 AGREEMENT?

A THIS CASE WAS NOT RESOLVED BY THE 1984 AGREEMENT. I DON'T KNOW WHAT HAPPENED TO THIS CASE. I DON'T KNOW IF IT WAS DISMISSED ON ITS OWN TERMS FOR NOT BEING BROUGHT TO TRIAL IN FIVE YEARS OR SOME ACTUAL AFFIRMATIVE ACTION WAS TAKEN TO DISMISS IT. I JUST DON'T HAVE A MEMORY OF THAT.

Q SO HOW IS IT THAT YOU KNOW THAT IT WASN'T DISMISSED BY THE '84 AGREEMENT?

A BECAUSE I KNOW THAT THE 1984 AGREEMENT WAS INTENDED TO SETTLE DISPUTES BETWEEN THE FEDERAL AVIATION ADMINISTRATION AND NOT BETWEEN PRIVATE LITIGANTS AND THE CITY OF SANTA MONICA.

Q DOESN'T THE TERM OF THE '84 AGREEMENT SAY "ALL DISPUTES"?

A IT SAYS "ALL DISPUTES BETWEEN THE PARTIES TO THE AGREEMENT," AND THE PARTIES TO THE AGREEMENT ARE THE FAA AND NOT THE CITY.

I BELIEVE IF WE HAD INTENDED TO RESOLVE SPECIFICATION PENDING STATE COURT LITIGATION BETWEEN PERSONS OTHER THAN THE CITY AND THE FAA, THAT WE WOULD HAVE SPECIFIED THAT.

THE COURT: MR. KIRSCHBAUM, HOW CAN THIS DOCUMENT SETTLE A CASE BETWEEN SANTA MONICA AIRPORT ASSOCIATION AND THE CITY OF SANTA MONICA WHEN THE SANTA MONICA AIRPORT ASSOCIATION IS CLEARLY NOT A SIGNATORY TO THIS AGREEMENT?
HOW WOULD THEY BE BOUND TO THIS SETTLEMENT IF THEY'RE NOT A PARTY TO THE AGREEMENT?

MR. KIRSCHBAUM: BECAUSE THEY PARTICIPATED IN ITS PREPARATION. IT WAS THE SETTLEMENT AGREEMENT OF THEIR CLAIMS.

THE COURT: IS THERE GOING TO BE EVIDENCE THAT THEY PARTICIPATED IN THIS DOCUMENT?

MR. KIRSCHBAUM: ABSOLUTELY. NOT FROM THIS WITNESS. APPARENTLY, HE'S DENYING THEIR PARTICIPATION, BUT WE'LL PRESENT EVIDENCE THAT WILL CONTROVERT THAT.

I GUESS IT'S UP TO THE COURT TO WEIGH THE CREDIBILITY AND DECIDE ITS VALUE.


THE COURT: GO ON, MR. KIRSCHBAUM.

MR. KIRSCHBAUM: THANK YOU, YOUR HONOR.

THE COURT: I GUESS THE QUESTION STILL REMAINS IS HOW CAN THEY BE BOUND IF THEY'RE NOT A SIGNATORY TO THE AGREEMENT?

MR. KIRSCHBAUM: BECAUSE THE AGREEMENT SPECIFIES ON ITS FACE THAT IT'S A SETTLEMENT OF ALL PENDING LITIGATION RELATING TO THE AIRPORT.
THE COURT: BUT HOW CAN YOU BE BOUND BY A DOCUMENT WHEN YOU DO NOT SIGN THE DOCUMENT OR THERE IS NO -- NOTHING IN THE DOCUMENT THAT INDICATES THAT YOU'RE WILLING TO BE BOUND BY ANY SETTLEMENT?

MR. KIRSCHBAUM: I'M NOT CERTAIN WHAT I UNDERSTAND YOU MEAN BY "BOUND BY."

THE COURT: BE "BOUND BY" IF THEY DON'T WANT -- MR. KIRSCHBAUM: IF THEY DIDN'T ACCEPT THE TERMS OF THIS 1984 AGREEMENT AND DECIDED INSTEAD TO PROCEED WITH EITHER THEIR STATE COURT LITIGATION OR THEIR ADMINISTRATIVE COMPLAINT?

THE COURT: RIGHT. HOW WOULD THIS BE A BAR TO THAT?

MR. KIRSCHBAUM: THE TERMS OF THE '84 AGREEMENT ITSELF SAY IT'S BARRED TO IT.

THE COURT: THE TERMS CAN SAY ANYTHING. MY CONCERN IS THERE'S NOTHING IN HERE -- YOU CAN TELL ME ABOUT THE TERMS, BUT MY QUESTION GOES TO HOW ARE THEY GOING TO BE LEGALLY BOUND BY A SETTLEMENT IN THIS DOCUMENT?

MR. KIRSCHBAUM: WELL, YOUR HONOR, THERE ARE A COUPLE OF POINTS TO THAT QUESTION. AND FRANKLY, I THINK A GREAT DEAL OF THE RESPONSIBILITY FOR WHAT IS CLEARLY AMBIGUITY FALLS ON THE SHOULDERS OF THE DRAFTER OF THIS DOCUMENT WHO IS THE CITY AND THE FAA. NOW, THE AIRPORT ASSOCIATION DOES NOT CONTEND THAT THEY HAD ANY --

THE COURT: I'M NOT SUGGESTING WE ARGUE THE CASE
NOW. THIS IS -- YOU KNOW, I THINK THESE ARE THE ISSUES
THAT IN MY MIND NEED TO BE ADDRESSED, AND HOPEFULLY, AS
EVIDENCE FALLS, WE'RE GOING TO GO IN THAT DIRECTION.

MR. KIRSCHBAUM: YES, WE ARE, YOUR HONOR.

THE COURT: ALL RIGHT. WHY DON'T YOU CONTINUE.

MR. KIRSCHBAUM: THANK YOU.

Q TURN TO EXHIBIT 474.

A OKAY.

Q HAVE YOU SEEN THIS BEFORE?

A LET ME LOOK. I BELIEVE I'VE SEEN THIS BEFORE.

Q THIS IS SANTA MONICA AIRPORT ASSOCIATION'S
PART 13 COMPLAINT FOR VIOLATION OF VARIOUS AGREEMENTS
WITH THE FEDERAL GOVERNMENT; CORRECT?

A THAT'S WHAT IT PURPORTS TO BE, AND I BELIEVE IT IS THE DOCUMENT THAT IS REFERRED TO IN THE LETTER THAT MR. TACHIKI ASKED ME ABOUT PREVIOUSLY.

Q RIGHT. TURN TO 476.

A YES.

I HAVE THE DOCUMENT.

Q THESE ARE THE TWO LETTERS MR. TACHIKI DISCUSSED WITH YOU EARLIER ABOUT THE FEDERAL AVIATION ADMINISTRATION DOCKETING SANTA MONICA AIRPORT ASSOCIATION'S FORMAL COMPLAINT AS DOCKET NO. 13-82-2; CORRECT?

A THAT'S WHAT IT SAYS.

Q DO YOU HAVE PERSONAL INFORMATION AS TO HOW THIS ADMINISTRATIVE COMPLAINT WAS RESOLVED?
A NO. I DON'T -- LIKE I SAID, I DON'T KNOW THAT IT WAS EVER RESOLVED.

Q DO YOU KNOW IF THIS COMPLAINT WAS PENDING AT THE TIME THAT THE CITY AGREED TO ENTER INTO NEGOTIATIONS WITH THE FEDERAL AVIATION ADMINISTRATION?

A WELL, I THINK ACTUALLY IF YOU LOOK AT EXHIBITS NO. 481 AND 482, THERE IS A LETTER FROM THE FAA TO MR. MEYERS, THE CITY ATTORNEY, THREATENING TO SUE US, AND A LETTER BACK FROM MR. MEYERS TO THE GENERAL COUNSEL THAT SAYS THAT WE'RE GOING TO MEET WITH THEM. AND I THINK THIS IS APRIL 14TH. THIS WOULD HAVE BEEN TWO MONTHS AFTER THE RESPONSE FROM THE FAA TO THE AIRPORT ASSOCIATION THAT YOUR COMPLAINT WAS INCOMPLETE. SO TO THAT EXTENT IF IT WAS PENDING, IT WAS PENDING AT THE TIME, YES.

Q DO YOU KNOW IF THE AIRPORT ASSOCIATION EVER PROVIDED ANY FURTHER DOCUMENTATION TO THE FAA TO CONTINUE PROSECUTION OF THEIR ADMINISTRATIVE COMPLAINT?

A I HAVE NO KNOWLEDGE ONE WAY OR THE OTHER.

Q DO YOU HAVE ANY KNOWLEDGE THAT THE FAA DISMISSED THE AIRPORT ASSOCIATION'S COMPLAINT FOR FAILURE TO PROVIDE ANY FURTHER DOCUMENTATION?

A NO, I HAVE NO KNOWLEDGE ON THAT, SIR.

Q DO YOU HAVE ANY KNOWLEDGE ABOUT A SETTLEMENT AGREEMENT OUTSIDE THE SCOPE OF THE '84 AGREEMENT THAT RESOLVES THE CITY OF SANTA MONICA'S CASE WITH THE AIRPORT ASSOCIATION IN DOCUMENT NO. 13-82-2?

A I DON'T RECALL ANY. IF YOU SHOWED ME ONE, IT
MIGHT REFRESH MY RECOLLECTION.

Q DIRECT YOUR ATTENTION TO PAGE -- TO EXHIBIT 479.

A YES. IT APPEARS TO BE MR. DANFORTH'S PART 13 COMPLAINT.

Q OKAY. AND YOU ACKNOWLEDGE RECEIVING THIS COMPLAINT AT THE TIME ON BEHALF OF THE CITY?

A I DON'T KNOW IF I PERSONALLY DID, BUT SOMEONE FROM THE CITY CERTAINLY ACKNOWLEDGED RECEIVING IT.

Q WAS THIS COMPLAINT RESOLVED BY AN AGREEMENT OTHER THAN THE '84 AGREEMENT?

A I DON'T BELIEVE SO.

Q WAS THE COMPLAINT RESOLVED BY THE '84 AGREEMENT?

A TO THE EXTENT THAT THE FAA DID NOT TAKE KNOWLEDGE -- TAKE ACTION ON THIS AND IT WAS PENDING AT THE TIME, I THINK IT WAS RESOLVED. I BELIEVE WE ANSWERED THIS COMPLAINT.

Q WELL, IS IT POSSIBLE TO RESOLVE AN ADMINISTRATIVE COMPLAINT WITHOUT AN ANSWER?

A I'M NOT SURE ABOUT THAT.

Q OKAY.

A MY UNDERSTANDING IS THE FAA WILL NOT TAKE FINAL ACTION AGAINST AN AIRPORT OPERATOR UNLESS THERE'S BEEN SOME JOINING OF THE ISSUES ALTHOUGH I SUPPOSE THERE COULD BE AN AGREEMENT TO HAVE THE COMPLAINT DISMISSED, BUT I DON'T REALLY HAVE ANY INDEPENDENT KNOWLEDGE OF THE FAA'S PROCEDURES.
1 Q THE CITY COULD ENGAGE IN SETTLEMENT
2 NEGOTIATIONS AND RESOLVE AN ADMINISTRATIVE COMPLAINT
3 BEFORE THE FAA BEFORE FILING AN ANSWER, COULD THEY NOT?
4 A IT'S CERTAINLY POSSIBLE, YES.
5 Q TURN, IF YOU WOULD, TO EXHIBIT 481.
6 A YES.
7 Q THIS IS A LETTER YOU JUST REFERRED TO A FEW
8 MOMENTS AGO, AT LEAST THE FIRST PAGE OF THIS; CORRECT?
9 A ACTUALLY, IT ONLY HAS ONE PAGE.
10 Q THERE SHOULD BE TWO PAGES HERE.
11 A OH, I'M SORRY. I MISSPOKE. THE FIRST
12 PAGE IS THE LETTER FROM THE FAA. THE SECOND PAGE IS THE
13 LETTER FROM MR. MEYERS BACK TO THE FAA.
14 Q RIGHT. THE FIRST PAGE SAYS THAT THE -- AT
15 LEAST ON THE SECOND PARAGRAPH, THAT:
16 "THE JUSTICE DEPARTMENT AUTHORIZED
17 INITIATION OF SUIT ON BEHALF OF THE UNITED
18 STATES, BUT BEFORE FILING A COMPLAINT, WE
19 WOULD LIKE TO NEGOTIATE WITH YOU."
20 A THAT'S EXACTLY WHAT IT SAYS.
21 Q DID THE DEPARTMENT OF JUSTICE EVER FILE SUIT
22 AGAINST THE CITY OF SANTA MONICA?
23 A NO, IT DID NOT.
24 Q DID THE FAA EVER FILE SUIT AGAINST THE CITY
25 OF SANTA MONICA?
26 A NO, IT DID NOT.
27 Q AND IN THE NEXT PAGE, TWO WEEKS AFTER THE
FIRST PAGE, APRIL 2ND, 1982, THE SECOND PAGE, APRIL 14,

THE CITY ATTORNEY ACCEPTS THE FAA'S OFFER TO MEET AND

START NEGOTIATIONS; CORRECT?

A WELL, IT SAYS MEET TO RESOLVE ANY AREAS OF

CONCERN, BUT TO THE EXTENT THAT IT INVOLVES

NEGOTIATIONS, YOU COULD FAIRLY IMPLY THAT, YES.

Q IT SAYS AT THE BOTTOM YOU'LL BE CONTACTING

THE GENERAL COUNSEL WITHIN A FEW DAYS.

DO YOU SEE THAT?

A YES, IT DOES.

Q DID YOU, IN FACT, DO THAT?

A I BELIEVE I DID.

Q DID THAT, IN FACT, START THE NEGOTIATION

PROCESS TOWARDS RESOLUTION OF THESE ISSUES?

A I BELIEVE WHAT THAT STARTED IS THE AGREEMENT

BY WHICH THE NBAA AND GAMA SUIT WAS DISMISSED, AND WE

AGREED TO COMMENCE A FORMAL AIRPORT MASTER PLANNING

PROCESS.

TO THE EXTENT THAT THE NEGOTIATION OF THE

SPECIFIC AGREEMENT, WHICH CAME LATER AFTER THAT, IS PART

OF THAT PROCESS, THEN THE ANSWER TO YOUR QUESTION IS

YES.

Q WELL, DIDN'T THE TERMS OF THE '84 AGREEMENT

COME FROM THE MASTER PLANNING PROCESS?

IN SO FAR AS TO HOW THE AIRPORT WAS GOING TO

BE DEVELOPED -- THE MOVEMENT OF SERVICES FROM THE SOUTH

SIDE TO THE NORTH SIDE TO FREE UP RESIDUAL LAND, THE

NOISE ABATEMENT PROGRAM -- DIDN'T ALL THOSE ELEMENTS
COME OUT OF THE MASTER PLANNING AND ENVIRONMENTAL IMPACT REPORT?

A WITHOUT --

Q I'M SORRY. I WAS DONE.

A WITHOUT GOING THROUGH THESE VARIOUS DOCUMENTS, SOME OF WHICH ARE VERY VOLUMINOUS IN DETAIL, I COULDN'T TELL YOU WHETHER ALL OF THE ELEMENTS IN THE AGREEMENT CAME DIRECTLY OUT OF THE MASTER PLANNING PROCESS. CERTAINLY AT LEAST SOME OF THEM DID, AND SOME OF THE MAJOR CONCEPTS DID. I THINK THAT'S A FAIR STATEMENT.

BUT UNLESS I REALLY HAD SAT DOWN AND COMPARED THESE TWO LINE BY LINE, I DON'T THINK I CAN REALLY SWEAR AT WHETHER ANY PARTICULAR THING WAS IN OR OUT UNLESS I STILL HAD REFERENCE TO THE ACTUAL DOCUMENTS THEMSELVES.


A I BELIEVE, AND AGAIN, I REALLY DON'T HAVE A PRECISE CONCEPT OF EITHER THE MASTER PLAN OR THE AIRPORT AGREEMENT FIXED IN MEMORY.

I BELIEVE THAT THE NUMBER OF FBOS WAS SPECIFICALLY PROVIDED FOR IN THE MASTER PLAN AND WAS CARRIED FORWARD IN THE AIRPORT AGREEMENT. I THINK
THAT'S A FAIR ASSESSMENT.

Q WHAT ABOUT THE NUMBER OF TIE DOWNS?

A THE NUMBER OF TIE DOWNS, I BELIEVE THERE IS A GROSS NUMBER OF TIE DOWNS THAT'S REFERRED TO IN THE AIRPORT PLAN, AND I THINK THEIR GENERAL LOCATION IS SPECIFIED. BUT UNLESS I REALLY HAD THE MAPS AND LOOK AT THEM, I COULDN'T GIVE YOU A MORE PRECISE ANSWER AS TO THAT. I THINK YOU PROBABLY BEST LOOK TO THE DOCUMENTS ON IT. I THINK GENERALLY THE NUMBER OF TIE DOWNS WAS CERTAINLY MENTIONED IN THE MASTER PLAN.

Q WHAT ABOUT THE NOISE ABATEMENT PROGRAM?

WEREN'T THE TERMS OF ALL OF THAT SET FORTH IN THE PLANNING DOCUMENTS?

A NO, I DON'T THINK SO. FOR CERTAIN THE PERFORMANCE BASED NOISE ORDINANCE WAS NOT IN THE MASTER PLAN. THAT, I THINK, WAS A PRODUCT OF MESTRE IN NEGOTIATIONS, NOT CH2M HILL, AND IT CAME LATER. AND WHAT I AM NOT CERTAIN OF IS WHETHER THE AGREEMENT TO HAVE A 95 SINGLE EVENT NOISE LIMIT RATHER THAN WHAT WE HAD WHICH WAS 85 OR -- CITY'S INITIAL POSITION WHICH ORIGINAL POSITION WAS -- WHICH WAS 90. I'M NOT SURE WHETHER IT WAS IN THE MASTER PLAN OR NOT. I COULD LOOK AND TELL YOU, BUT I DON'T HAVE IT IN MEMORY.

Q YOU DON'T BELIEVE THAT MR. MESTRE'S WORK WAS PART OF THE PLANNING PROCESS?

A HE WAS PROBABLY ENTERED INTO IT IN SOME EXTENT. HE WAS ON THE TEAM. HE DID NOT -- I DON'T THINK THAT HE CAME UP WITH A PERFORMANCE-BASED NOISE
PLAN UNTIL WE WERE NEGOTIATING THE AIRPORT AGREEMENT.

Q AND YOU BELIEVE THAT OCCURRED BETWEEN NOVEMBER OF '81 -- I'M SORRY. NOVEMBER OF '83 AND THE EXECUTION OF JANUARY OF '84, THOSE TWO MONTHS? YOU SAY THAT?

A I DON'T UNDERSTAND YOUR QUESTION.

Q I BELIEVE YOU TESTIFIED EARLIER THAT THE PLANNING PROCESS WAS CONCLUDED IN NOVEMBER OF 1983; RIGHT?

A THE MASTER PLANNING PROCESS, YES.


A I DON'T HAVE ANY PRECISE RECOLLECTION OF EXACTLY WHEN THE AIRPORT WORKING GROUP WAS MEETING, BUT IT SOUNDS -- THAT SOUNDS RIGHT TO ME.

YES, THERE WAS A LENGTHY PLANNING PROCESS LEADING UP TO THE DEVELOPMENT OF THE PLAN.

Q SO IS IT YOUR TESTIMONY THAT MR. MESTRE'S WORK RELATING TO THE PERFORMANCE-BASED NOISE PROGRAM DID NOT OCCUR DURING THAT TIME BUT, INSTEAD, OCCURRED AFTER THAT TIME, BETWEEN NOVEMBER OF 1983 AND THE EXECUTION OF THE SANTA MONICA AIRPORT AGREEMENT IN JANUARY OF '84?

A I BELIEVE THAT'S CORRECT. IF YOU SHOW ME THE
MASTER PLAN, I COULD LOOK AT IT AND GIVE YOU A BEST ANSWER.

Q THERE IS ALSO AN ENVIRONMENTAL IMPACT REPORT IN THE 1984 AGREEMENT; RIGHT?
A YES, IT WAS.

Q WASN'T MR. MESTRE'S OPINION INCLUDED ON THE WORK ON THAT?
A MR. MESTRE DID WORK AT DIFFERENT TIMES. I BELIEVE MR. MESTRE AT ONCE, AT LEAST, IT WAS INCLUDED IN THE ENVIRONMENTAL IMPACT REPORT. WHAT I DON'T KNOW IS WHETHER THE CONCEPT OF THE PERFORMANCE-BASED NOISE LIMIT WAS INCLUDED IN THAT. AGAIN, I WOULD HAVE TO LOOK AT THE DOCUMENT.

Q OKAY. OTHER THAN -- LET'S ASSUME FOR A MOMENT THAT WE'RE GOING TO TAKE THE PERFORMANCE-BASED NOISE PROGRAM OUT OF THIS QUESTION. WHAT OTHER PORTIONS OF THE '84 AGREEMENT DO YOU RECALL NOT BEING A PART OR COMING OUT OF THE PLANNING PROCESS?
A HONESTLY, I WOULD HAVE TO LOOK AT THE DOCUMENTS THEMSELVES TO REFRESH MY MEMORY. I WOULD BE HAPPY TO DO THAT IF YOU WOULD LIKE ME TO DO IT.

Q NO. INSTEAD, I WOULD LIKE YOU TO LOOK AT EXHIBIT 482.
A THIS WOULD BE A LETTER RE FORMAL COMPLAINT, NO. 13-82-4.

Q YES, SIR.

HAVE YOU SEEN THIS BEFORE?
I BELIEVE I HAVE, YES.

THIS IS THE LETTER FROM THE FAA DOCKETING MR. DANFORTH'S COMPLAINT AS A PART 13 ACTION, TWO NUMBERS AFTER THE AIRPORT ASSOCIATION'S, THE AIRPORT ASSOCIATION WAS 82-2, THIS ONE IS 82-4?

YES.

NEXT, TURN YOUR ATTENTION, IF YOU WOULD, TO EXHIBIT 485.

THAT WOULD BE THE CITY'S ANSWER TO THE COMPLAINT.

YES, IT IS.

THAT WOULD BE DANFORTH'S COMPLAINT.

YES, IT IS.

I SEE THE DOCUMENT.

OKAY. AND THE CITY PREPARED THIS IN RESPONSE TO MR. DANFORTH'S COMPLAINT?

YES.

OKAY. AND IF YOU LOOK ON PAGE 4, PARAGRAPH NO. 11, THE SECOND SENTENCE STATES: "WE DO NOT REGARD THE 1948 INSTRUMENT OF TRANSFER AS HAVING ANY CONTINUED FORCE."

THAT'S WHAT WE SAID.

OKAY.

AND ON THE BOTTOM OF PAGE 8, THE LAST SENTENCE STATES THAT: "IT'S THE CURRENT POLICY OF THE CITY COUNCIL AS FOLLOWS:" AND IF YOU GO TO THE NEXT PAGE NO. B, "THE CITY INTENDS TO CLOSE THE AIRPORT WHEN LEGALLY POSSIBLE"; CORRECT?
A THAT'S WHAT IT SAYS AT SUB B OF THAT PARAGRAPH. IT ALSO SAYS, "THE CITY RECOGNIZES ITS PRESENT OBLIGATION TO OPERATE A GENERAL AVIATION AIRPORT OPEN TO THE PUBLIC."

Q HOW ARE YOU GOING TO OPEN TO THE PUBLIC A GENERAL AVIATION AIRPORT IF YOU'RE GOING TO CLOSE THE AIRPORT?

A WELL, WITHOUT QUIBBLING, IT SAYS RIGHT ON THE FACE OF THAT PARAGRAPH THAT WE INTEND TO CLOSE THE AIRPORT WHEN LEGALLY POSSIBLE. BUT WE RECOGNIZE OUR PRESENT OBLIGATION TO OPERATE A GENERAL AVIATION AIRPORT, WHICH I WOULD TAKE IT TO MEAN THAT THE CITY'S INTENTION IS TO CONTINUE TO OPERATE THE GENERAL AVIATION AIRPORT UNTIL IT IS ESTABLISHED THAT THERE IS NO LEGAL IMPEDIMENT TO CLOSING ITS AIRPORT.

Q LET ME NEXT DIRECT YOUR ATTENTION TO EXHIBIT 487.

A WHAT VOLUME IS THAT, SIR?

Q THAT WOULD BE VOLUME 10.

A I SEE THE DOCUMENT.

Q THIS PURPORTS TO BE ANOTHER COMPLAINT UNDER PART 13. THIS ONE IS DATED MAY 22ND, 1982. IF YOU'LL TURN TO THE --

A THAT'S WHAT IT PURPORTS TO BE, YES.

Q LOOK TO THE TOP OF THE THIRD PAGE.

MR. TACHI: YOUR HONOR, I WOULD OBJECT TO THAT ON FOUNDATION GROUNDS TO --

THE COURT: WHAT EXHIBIT NOW?
MR. TACHIKI: THIS IS EXHIBIT 487.

MR. KIRSCHBAUM: EXHIBIT 487.

MR. TACHIKI: IT IS CLEARLY A DRAFT. IT IS NOT SIGNED, AND IT HAS BLANKS THROUGHOUT THE DOCUMENT, AND HE PURPORTS IT TO BE A COMPLAINT. IT CERTAINLY HAS NO NUMBER OR FILE STAMP TO SHOW THAT'S WHAT IT IS. I'LL LET MR. STARK PROVIDE THE FOUNDATION FOR THIS.

MR. KIRSCHBAUM: I DON'T BELIEVE MR. STARK CAN PROVIDE THE FOUNDATION FOR THIS DOCUMENT. I BELIEVE MY WITNESSES CAN, AND RATHER THAN HAVING TO RECALL HIM, I WOULD ASK THAT I BE PERMITTED TO QUESTION WITH RESPECT --

THE COURT: ALL RIGHT. I'LL ALLOW YOU TO QUESTION SUBJECT TO A MOTION TO STRIKE.

MR. KIRSCHBAUM: OKAY.

Q HAVE YOU SEEN THIS DOCUMENT BEFORE OR A DOCUMENT SIMILAR TO THIS PURPORTING TO BE A COMPLAINT UNDER PART 13 FILED IN OR ABOUT MAY OF 1982?

A I'M NOT SURE.

Q WELL, TURN TO -- I THINK IT'S THE SEVENTH PAGE UNDER THE MAJOR HEADING "PERSONS FILING COMPLAINT."

A I HAVE THAT PAGE, SIR.

Q OKAY. YOU SEE IN THE FIRST SENTENCE THERE UNDER THE PERSONS FILING THE COMPLAINT ARE IDENTIFIED AS THE SANTA MONICA AIRPORT ASSOCIATION AND ITS 1200 PLUS MEMBERS AND BRILES WING AND HELICOPTER, INC.?

A YES, I SEE THAT.

Q DO YOU EVER RECALL HAVING AN ADMINISTRATIVE
COMPLAINT FILED WITH THE FAA BY THE SANTA MONICA AIRPORT ASSOCIATION WITH REGARDS TO BRILES WING AND HELICOPTER, INC.?

A I DON'T SPECIFICALLY RECALL THIS DOCUMENT. IT WOULDN'T SURPRISE ME IF THIS DOCUMENT HAD ACTUALLY BEEN FILED.

Q WHY WOULDN'T IT SURPRISE YOU?

A BECAUSE I KNOW MR. BRILES WHO OPERATED A HELICOPTER OPERATION AT THE AIRPORT WAS AGGRIEVED, AND I KNOW THAT THE AIRPORT ASSOCIATION WAS AGGRIEVED. AND IT WOULDN'T SURPRISE ME IF THEY FILED A COMPLAINT.

Q WOULD IT SURPRISE YOU IF THIS COMPLAINT WAS PENDING AT THE TIME OF THE 84 AGREEMENT?

A I DON'T KNOW ONE WAY OR THE OTHER WHAT THE STATUS OF THIS COMPLAINT WOULD HAVE BEEN. I REALLY DON'T HAVE ANY INDEPENDENT RECOLLECTION.

Q DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO HOW THIS COMPLAINT MAY HAVE BEEN RESOLVED?

A NO.

Q DO YOU HAVE ANY PERSONAL KNOWLEDGE REGARDING ANY OTHER SETTLEMENT AGREEMENT OTHER THAN THE '84 AGREEMENT THAT MAY HAVE RESOLVED THIS COMPLAINT?

A NO, NOT UNLESS YOU SHOW ME A DOCUMENT WHICH WOULD REFRESH MY MEMORY.

Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 153.

A THAT WOULD BE IN VOLUME 3, WOULDN'T IT?

Q THAT IS THE FIRST DOCUMENT IN VOLUME 3.

A YES, THAT'S THE SO-CALLED INTERIM ALTERNATIVE
1. STUDY PREPARED BY THE ARROYO GROUP.


A. YES, ALTHOUGH I -- THE LETTER THAT YOU REFERRED TO FROM THE FAA WAS 1982, AND HE COMMISSIONED THE ARROYO GROUP SHORTLY AFTER THAT. THE ARROYO GROUP WAS A PLANNING FIRM IN PASADENA.

Q. RIGHT. AND TURN TO PAGE 14 OF THIS DOCUMENT, THE ONE WITH THE BATES MARK 9057.

A. I HAVE THE PAGE.

Q. OKAY. DO YOU SEE THAT THERE ARE A SERIES OF BULLET POINTS ABOVE THE SECTION E ENTITLED "COMMUNITY GROUPS"?

I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE FULL PARAGRAPH ABOVE THE SECTION LABELED "COMMUNITY GROUPS" THAT BEGINS:

"AN AIRPORT PLAN HAS BEEN PROPOSED BY THE SANTA MONICA AIRPORT ASSOCIATION, SMAA, WHICH PURPORTEDLY REFLECTS THE DESIRES OF THE COMMUNITY OPERATOR."

DO YOU SEE THAT?

A. YES, FOR CALIFORNIA AVIATION OPERATION, WHICH IS AN FBO ON THE SOUTH SIDE OF THE AIRPORT. YES, I SEE
1 THE PARAGRAPH.
2 Q AND CALIFORNIA AVIATION DID NOT LIKE THE
3 ASSOCIATION'S PLAN; CORRECT?
4 A FOR SOME REASON, YES.
5 Q WERE THERE ANY OTHER CITIZEN GROUPS THAT
6 PROVIDED AN AIRPORT PLAN OR PROPOSED AIRPORT PLAN TO THE
7 CITY DURING THE PLANNING PROCESS BETWEEN 1981 TO 1984?
8 A TO BE PRECISE, I GUESS THE AIRPORT
9 ASSOCIATION PROVIDED ONE TO THE CITY AS WELL AS TO ITS
10 CONSULTANTS, TO THE BEST OF MY KNOWLEDGE. I DON'T
11 BELIEVE SO -- I DON'T THINK THE AIRPORT NEIGHBORS DID,
12 ALTHOUGH YOU NEVER -- THEY COULD HAVE MADE SUBMISSIONS.
13 I JUST DON'T REMEMBER ANY.
14 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 489.
15 A THAT WOULD BE IN VOLUME 10?
16 Q THAT WOULD BE IN VOLUME 10. THIS IS A STAFF
17 REPORT TO THE MAYOR AND CITY COUNCIL PREPARED BY
18 YOURSELF?
19 A IT IS JOINTLY PREPARED BY MYSELF AND BY JOHN
20 JALILI WHO AT THE TIME WAS THE ASSISTANT CITY MANAGER.
21 Q HE WAS ALSO AT THE TIME THE ACTING AIRPORT
22 DIRECTOR; CORRECT?
23 A I THINK THAT'S RIGHT. MR. FITZGERALD HAD
24 BEEN RETIRED. MR. DITTMAR HADN'T BEEN APPOINTED YET.
25 SO I BELIEVE THAT'S CORRECT. I'M QUITE CERTAIN HE WAS
26 THE ASSISTANT CITY MANAGER.
27 Q OKAY. LET ME DIRECT YOUR ATTENTION TO PAGE 6
28 OF THIS DOCUMENT UNDER THE MAJOR HEADING NO. 2: "SCOPE
OF WORK FOR AIRPORT MASTER PLAN STUDY."

A I'M SORRY, WHAT PAGE?

Q NO. 6.

A I SEE IT.

Q OKAY. ABOUT HALFWAY DOWN THE FIRST PARAGRAPH, IT INDICATES:

"DURING THE COURSE OF STUDY THERE WILL BE EXTENSIVE CONSULTATION WITH THE AIRPORT COMMISSION, CITY STAFF, AIRPORT USERS, AIRPORT NEIGHBORS AND THE FAA."

A THAT'S WHAT IT SAYS.

Q OKAY. THERE WAS, IN FACT, EXTENSIVE CONSULTATION WITH THE SANTA MONICA AIRPORT ASSOCIATION AS PART OF THE AIRPORT USERS; CORRECT?

A I WOULD ASSUME THAT.

Q WEREN'T YOU A PART OF IT?

A YES.

Q OKAY. AND IN THE NEXT SEVERAL PARAGRAPHS AND PAGES, IT DETAILS THE TOPICS THAT ARE BEING INCLUDED; CORRECT?

A IN THE MASTER PLAN STUDY, YES.

Q THEY'RE NUMBERED 1 THROUGH 11; CORRECT?

A THAT'S WHAT IT SAYS.

Q OKAY. NO. 3 TALKS ABOUT THE RUNWAY LENGTH?

A YES, THAT'S WHAT IT TALKS ABOUT.

Q NO. 4 TALKS ABOUT THE NUMBER OF AIRCRAFT TIE DOWNS AND THE FLEET MIX?

A YEAH.
Q FIVE TALKS ABOUT THE FBOS AND THE FLEET MIX?
A IT SAYS THE FBOS THAT WOULD ADEQUATELY SERVE THE FLEET MIX AND THE ITINERANT MIX.
Q RIGHT. AND NO. 6 TALKS ABOUT LAND AVAILABLE FOR NON-AERONAUTICAL USE?
A YES.
Q AND PART D OF NO. 6 SAYS A RESIDUAL LAND PLAN SHOWING THOSE PARTS OF THE AIRPORT NOT NECESSARY FOR AERONAUTICAL USE?
A THAT'S ACTUALLY PART D OF NO. 7, BUT YES, THAT'S CORRECT.
Q PART D OF NO. 7.
I'LL DIRECT YOUR ATTENTION TO EXHIBIT 490 -- I'M SORRY, 491.
A THAT'S THE JOINT MOTION TO DISMISS.
Q RIGHT. THIS CASE WAS DISMISSED PURSUANT TO THIS -- THIS CASE BEING THE NBAA CASE ABOUT THE '85 DECIBEL NOISE LIMIT; CORRECT?
A YES.
Q THE MOTION WAS MADE IN JANUARY OF 1983; RIGHT?
A YES.
Q IN EXCHANGE FOR STARTING THE PLANNING PROCESS THAT LED TO THE '84 AGREEMENT?
A IT WAS ENTERED INTO AFTER WE LEFT THE CONTRACTS WITH THE PRIMARY AIRPORT CONSULTANT FOR THE MASTER PLAN AND WITH MR. MESTRE, AS IT TURNED OUT.
LET ME CLARIFY YOUR PRIOR QUESTION.
1 MR. MESTRE WAS ON BOARD WITH THE CITY AT THE TIME THE
2 CONTRACT FOR THE MASTER PLAN WAS WRITTEN BUT -- YES,
3 THAT'S CORRECT.
4 Q AND EXHIBIT 494 IS THE ORDER THAT WE JUST
5 DISCUSSED EARLIER DISMISSING THIS CASE; CORRECT?
6 A YES.
7 Q AND ALTHOUGH IT WAS DISMISSED WITHOUT
8 PREJUDICE, THIS CASE WAS NOT PENDING IN JANUARY OF 1984;
9 CORRECT?
10 A NO. WE COMPLIED WITH THE TERMS OF THE
11 DISMISSAL. AND A DISMISSAL WENT INTO EFFECT IN JANUARY,
12 AND IT WASN'T REVIVED, NOT IN EFFECT IN JANUARY 1984.
13 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 310.
14 A VOLUME 5, IS IT?
15 Q IT IS.
16 A I SEE IT.
17 Q DID YOU ASSIST IN THE PREPARATION OF THIS
18 DOCUMENT?
19 A YES, I DID, TOGETHER WITH MR. JALILI AND
20 MS. VIVIAN ROTHSTEIN WHO IS -- ROTHSTEIN, I BELIEVE,
21 WORKED FOR THE CITY ADMINISTRATIVE OFFICE IN SOME
22 CAPACITY.
23 Q FIRST PARAGRAPH DISCUSSES RETENTION OF THE
24 FIRMS, CH2M HILL AND MESTRE GRIEVE IN NOVEMBER OF '82?
25 THE COURT: WE'RE LOOKING AT 310?
26 MR. KIRSCHBAUM: YES, YOUR HONOR. IT'S A
27 MEMORANDUM DATED JANUARY 21, 1983.
28 THE WITNESS: IT'S FROM THE CITY STAFF TO THE
AIRPORT COMMISSION. YES, THAT'S WHAT IT SAYS.

Q BY MR. KIRCHBAUM: OKAY. DOES THAT AT ALL

REFRESH YOUR RECOLLECTION THAT MR. MESTRE, HAVING BEEN

RETAINED IN NOVEMBER OF '82, WAS WORKING ON THE

PERFORMANCE-BASED NOISE PROGRAM AS PART OF THE PLANNING

PROCESS?

A NO, IT DOES NOT. IT INDICATES THAT

MR. MESTRE HAD BEEN RETAINED AS A NOISE CONSULTANT. THE

IDEA FOR THE PERFORMANCE-BASED NOISE PROGRAM CAME LATER

IN THE PROCESS. I DON'T RECALL EXACTLY WHEN. SO IT

REFRESHES MY RECOLLECTION AS TO WHEN MR. MESTRE WAS

HIRED, BUT WHAT IT DOESN'T REFRESH MY RECOLLECTION AS TO

IS WHETHER THE PERFORMANCE-BASED NOISE ORDINANCE WAS

GERMINATED DURING THE MASTER PLANNING PROCESS OR DURING

THE CONTRACT NEGOTIATION PROCESS. I DON'T HAVE A

RECOLLECTION EITHER WAY AT THIS POINT.

Q I JUST THOUGHT THAT MIGHT REFRESH YOUR

RECOLLECTION. I GUESS IT DOESN'T.

A UNFORTUNATELY, IT DOESN'T.

Q LOOK AT THE SECOND PAGE OF THIS DOCUMENT,

UNDER THE HEADING "WORKING GROUP." THE ASSOCIATION,

ABOUT TEN LINES DOWN ON THE PAGE, IS LISTED AS ONE OF

THE MEMBERS OF THE WORKING GROUP; IS THAT CORRECT?

A YES, IT IS.

Q IT SAYS STAG, SMAA, NBAA. STAG WAS AN

ANTI-AIRPORT GROUP, IF I RECALL CORRECTLY, THAT THEY'RE

ONE OF THE NEIGHBOR GROUPS; CORRECT?

A "STOP THE AIRPORT GIVEAWAY," IF I REMEMBER
CORRECTLY.

Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 496. THAT IS IN VOLUME 10.

A I HAVE THE DOCUMENT, SIR.

Q ON 496, THIS IS AGAIN A DOCUMENT THAT YOU PREPARED?

A IT WAS PREPARED BY MR. JALILI AND MYSELF, YES.

Q AND IT'S A PROGRESS REPORT ON THE WORKING GROUP; CORRECT?

A YES, TO THE AIRPORT COMMISSION. IT'S A MEMO FROM THE STAFF TO THE AIRPORT COMMISSION THAT I THINK -- I BELIEVE THAT'S CORRECT.

Q OKAY.

A IT SAYS, "THE WORKING GROUP HAS BEEN CONVENED, 15 MEMBERS. FULL SPECTRUM HAS ESTABLISHED A DIALOGUE."

Q ON THE COMPLEX ISSUES INVOLVED; CORRECT?

A YES.

IT SOUNDS MORE LIKE MR. JALILI'S WRITING THAN MINE.

Q OKAY. LET ME DIRECT YOUR ATTENTION TO EXHIBIT 501.

A THAT APPEARS TO BE A PRESS RELEASE FROM THE CITY MANAGER'S OFFICE.

Q RIGHT. DID THEY EVER SEND THESE PRESS RELEASES OVER TO THE CITY ATTORNEY'S OFFICE?

A WELL, THE CONTACT PERSON WAS A CITY
ATTORNEY'S WIFE, BUT I'M NOT SURE THAT'S QUITE THE SAME THING. I WOULDN'T DOUBT THAT THIS PARTICULAR PRESS RELEASE WAS SENT OVER TO THE CITY ATTORNEY'S OFFICE. I DON'T HAVE AN INDEPENDENT RECOLLECTION.

Q AT THE BOTTOM OF THE FIRST PAGE AND CONTINUING ON TO THE NEXT PAGE, IT DISCUSSES THE WORK OF THE WORKING GROUP AND INDICATES IT'S COMPOSED OF AVIATION, NEIGHBORHOOD, AND GOVERNMENT INTERESTS; CORRECT?

A THAT'S WHAT IT SAYS.

Q AND IT'S TALKING ABOUT FREEING UP COMPATIBLE NONAVIATION DEVELOPMENT TO EARN THE CITY $4 TO $10 MILLION A YEAR; RIGHT?

A YEAH, I DON'T KNOW WHERE THEY GOT THE NUMBER, THOUGH.

Q AND TOWARDS THE BOTTOM OF THAT SECOND PAGE, IT'S TALKING ABOUT REMOVING AND RELOCATING ALL OF THE FACILITIES SOUTH OF AIRPORT AVENUE TO A SUFFICIENT CONFIGURATION NORTH OF THE RUNWAY; RIGHT?

A THAT'S WHAT IT'S TALKING ABOUT, YES.

Q AND THOSE WERE TERMS THAT WERE INCORPORATED INTO THE '84 AGREEMENT; RIGHT?

A I WOULD HAVE TO LOOK AT THE '84 AGREEMENT. I KNOW THAT THE MASTER PLAN, HENCE, THE '84 AGREEMENT, CALLS FOR, I BELIEVE, 48 ACRES ON THE SOUTH SIDE OF THE RUNWAY TO BE USED FOR RESIDUAL LAND. BUT MY RECOLLECTION IS THAT THE PORTION OF THE SOUTH SIDE OF THE AIRPORT WAS TO BE KEPT IN AIRPORT USE AS WELL. BUT
AGAIN, I WOULD HAVE TO ACTUALLY LOOK AT THE DOCUMENT TO VERIFY THAT.

Q OKAY. CHECK -- TURN TO PAGE 7 OF THIS DOCUMENT.

A ARE WE STILL ON THE PRESS RELEASE?

Q I BELIEVE SO.

A SEVEN-PAGE PRESS RELEASE.

Q WELL, ACTUALLY, IT'S LABELED PAGE 7, BUT IF YOU'LL LOOK ON PAGE 4, IT'S THE HEADING ENTITLED "EXECUTIVE SUMMARY."

A AT THE TOP OF THE PAGE, IT SAYS, "REGULARLY USING SMO, REQUIRED RUNWAY LENGTH LESS THAN 5,000 FEET."

Q IT DOES.

A THEN IT STARTS WITH THE FIRST FULL PARAGRAPH, "LAYOUT CONCEPT PLAN."

Q THAT'S THE FIRST PARAGRAPH I WANT TO DRAW YOUR ATTENTION TO, "AIRPORT LAYOUT CONCEPT PLAN AND NOISE MITIGATION PROGRAM," WITH ATTENTION ON FIVE MAJOR OBJECTIVES, AND THE FIRST OBJECTIVE IS TO "END THE SERIOUS LEGAL CONTROVERSY AND RESTORE CERTAINTY OF OBLIGATION BETWEEN THE CITY AND AIRPORT USERS."

SEE THAT?

A YEAH. YES, I DO.

Q AND WHAT IS YOUR UNDERSTANDING OF WHAT THE SERIOUS LEGAL CONTROVERSY BETWEEN THE CITY AND THE AIRPORT USERS WAS AT THE TIME OF THIS PRESS RELEASE IN SEPTEMBER OF '83?

A I BELIEVE THE SERIOUS LEGAL CONTROVERSY
INVOLVES THE EXTENT TO WHICH THE CITY WAS OBLIGATED TO
KEEP THE AIRPORT OPEN AND THE EXTENT TO WHICH WE HAD THE
ABILITY TO REGULATE NOISE AT THE AIRPORT.

Q IS IT NOT TRUE THAT THE ONLY DOCUMENT FILED
WITH RESPECT TO THE CITY'S ABILITY TO KEEP THE AIRPORT
OPEN WAS THE AIRPORT ASSOCIATION'S PART 13 COMPLAINT
FILED IN JANUARY OF 1983?

A THE ONLY DOCUMENT ON FILE?

Q THE ONLY DOCUMENT EVIDENCING A SERIOUS LEGAL
CONTROVERSY THAT WAS FILED?

A THAT WAS FILED BY A PARTY OTHER THAN THE FAA,
THAT IS CORRECT. THERE IS THE FAA'S THREAT TO SUE.

Q THAT THEY NEVER CARRIED THROUGH ON; CORRECT?

A NO, BECAUSE WE RESOLVED THE CONTROVERSY.

Q TURN TO PAGE 10 OF THIS DOCUMENT -- WELL --
A AFTER THE MAP?

Q I'M SORRY, GO BACK TO PAGE 7. THE TERMS OF
THIS SECTION THAT DESCRIBE THE OBJECTIVE TALK ABOUT THE
CONTROVERSY BETWEEN THE CITY AND THE AIRPORT USERS, NOT
THE FAA; RIGHT?

A IT SAYS, "AND THE" -- YEAH, THE SENTENCE IS
ACTUALLY AMBIGUOUS THE WAY IT IS WRITTEN, BUT I WOULD
CERTAINLY RECOGNIZE A CERTAINTY OF OBLIGATIONS BETWEEN
THE CITY AND AIRPORT USER. OBLIGATIONS BETWEEN AIRPORT
USER I THINK WOULD MEAN THE LEASES AND TIE DOWNS.

Q TURN TO PAGE 10 IF YOU WOULD.

A TEN BEFORE OR AFTER THE PICTURE?

Q IT'S RIGHT AFTER THE PICTURE. TOWARDS THE
MIDDLE OF THE PAGE THERE'S A MAJOR HEADING, NO. 3, "IMPLEMENT THE PERFORMANCE-BASED NOISE PROGRAM."

Q DO YOU SEE THAT?
A YES.
Q DOES THAT AT ALL REFRESH YOUR RECOLLECTION AS TO WHETHER OR NOT THE PERFORMANCE-BASED NOISE PROGRAM WAS PART OF THE PLANNING PROCESS IN SEPTEMBER OF 1983 RATHER THAN SOMETHING NEGOTIATED SUBSEQUENT TO NOVEMBER OF '83?
A YES. IT WOULD INDICATE TO ME THAT THE NEGOTIATION -- THAT THE CONCEPT OF THE PERFORMANCE-BASED NOISE PROGRAM WAS DEVELOPED BEFORE NOVEMBER OF 1983. THAT'S WHAT IT WOULD INDICATE TO ME.
Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 43. THAT'S IN THE FIRST VOLUME.
A IT APPEARS TO BE MINUTES OF THE OCTOBER 24TH, 1983 COMMISSION MEETING. IS THAT WHAT YOU HAD IN MIND?
Q YES, SIR. IF YOU WOULD REFER DOWN TO "NEW BUSINESS," IT INDICATES THEY'RE CONSIDERING THE MODIFICATIONS TO THE PROPOSED AIRPORT LAYOUT CONCEPT PLAN.
A IT SAYS, "AIRPORT CONCEPT PLAN." THAT'S CORRECT.
Q AND IT INDICATES IN THE ROLL CALL SECTION, IN SECTION 2 OF THIS DOCUMENT, THAT YOU WERE PRESENT FOR THIS MEETING?
A YES.
Q IN THE SECOND PARAGRAPH OF NEW BUSINESS, MR. JALILI RELATED THAT AS A RESULT OF ADDITIONAL MEETINGS WITH AVIATION AND COMMUNITY INTERESTS, VARIOUS MODIFICATIONS TO THE PROPOSED CONCEPT PLAN WERE PROPOSED.

A THAT'S WHAT IT SAYS.

Q OKAY. DO YOU RECALL BEING A PART OF MEETINGS WITH AVIATION AND COMMUNITY INTERESTS RELATING TO CHANGES TO THE CONCEPT PLAN?

A HOLD ON FOR A SECOND. THE THREE OR FOUR EXHIBIT BOOKS ARE SLIPPING.

Q WOULD YOU REPEAT THE QUESTION, PLEASE.

Q CERTAINLY. REFER, IF YOU WILL, TO THE SECOND PARAGRAPH OF THE SECTION MARKED NO. 4, "NEW BUSINESS," WHERE MR. JALILI DISCUSSES --

A IT'S AS A RESULT OF ADDITIONAL MEETINGS WITH AVIATION AND COMMUNITY INTERESTS, VARIOUS MODIFICATIONS HAVE BEEN MADE TO THE AIRPORT CONCEPT PLAN.

Q YES.

AND MY QUESTION TO YOU WAS, DO YOU RECALL BEING IN MEETINGS WHERE AVIATION INTERESTS DISCUSSED MODIFICATIONS TO THE CONCEPT PLAN?

A I DON'T HAVE A SPECIFIC RECOLLECTION OF BEING IN SUCH MEETINGS, BUT I HAVE A GENERAL RECOLLECTION OF BEING PRESENT IN MEETINGS. I DON'T KNOW WHETHER MR. JALILI HAD MEETINGS WITH EITHER AVIATION INTEREST OR NEIGHBOR INTEREST, WHICH I TAKE WHAT IS MEANT BY COMMUNITY INTEREST, OTHER THAN THE WORKING GROUP.
INDEPENDENT WHEN I WASN'T PRESENT.

Q  BY AVIATION INTEREST, YOU UNDERSTAND THAT TO MEAN THE SANTA MONICA AIRPORT ASSOCIATION?

A  NOT NECESSARILY. TO INCLUDE, BUT NOT LIMITED TO THE SANTA MONICA AIRPORT ASSOCIATION.

Q  YOU KNEW THEY WERE A PART OF THESE MEETINGS; RIGHT?

A  YES, I CERTAINLY -- I WOULD THINK THAT, AS A GENERAL MATTER, IN MEETINGS WHERE AVIATION INTEREST IN GENERAL, AS OPPOSED TO SPECIFIC LEASES, WERE DISCUSSED, GENERALLY REPRESENTATIVES FROM THE AIRPORT ASSOCIATION WOULD BE PRESENT.

Q  LET ME --

THE COURT: WHY DON'T WE TAKE THAT UP AFTER THE LUNCH BREAK. LET'S BREAK FOR LUNCH AT THIS POINT. WE'LL RESUME AT 1:30.

MR. TACHIKI: WE HAVE A SCHEDULING PROBLEM WITH MR. STARK. I TOLD COUNSEL THAT HE NEEDS TO BE BACK IN SANTA BARBARA THIS AFTERNOON.

THE COURT: HOW MUCH MORE DO YOU HAVE?

MR. KIRSCHBAUM: I HAVE SEVEN MORE DOCUMENTS I NEED TO DISCUSS WITH HIM AND MAYBE 15, 20 MINUTES. I'M DOING MY BEST.

THE COURT: WHY DON'T YOU FINISH UP. I'LL GIVE YOU 15 MINUTES TO FINISH UP.

MR. TACHIKI: YOUR HONOR, I CAN CERTAINLY STAY A FEW MORE MINUTES. I HAVE A PRETTY IMPORTANT CONFERENCE CALL AT 2:00 O'CLOCK. 15 MINUTES.
THE COURT: 15 MINUTES, WE'LL --
MR. KIRSCHBAUM: I'LL DO MY BEST, YOUR HONOR.
THE COURT: IN 15 MINUTES I'M EXCUSING HIM, SO
FINISH UP.
MR. KIRSCHBAUM: EXHIBIT 509, PLEASE.
THE WITNESS: THAT'S IN VOLUME 10?
MR. KIRSCHBAUM: IT IS IN VOLUME 10. THE TOP OF
IT IS BLOCKED OUT, BUT IT APPEARS TO BE CITY COUNCIL
MINUTES.
Q CITY COUNCIL MINUTES. I'M LOOKING AT
EXHIBIT 509. IT'S A STAFF REPORT?
A I'M SORRY. I THOUGHT YOU SAID 510.
Q IF I DID, I MISSPOKE.
PLEASE REFER TO EXHIBIT 509?
A 509 IS A STAFF REPORT DATED NOVEMBER 8, 1983.
Q YOU WROTE THIS?
A YES, I DID. I TYPED IT. AS YOU SEE, THE
LITTLE S AFTER THE BIG THREE S'S, I TYPED IT AS WELL AS
WROTE IT.
Q I WOULD LIKE TO DRAW YOUR ATTENTION AT LEAST
INITIALLY TO THE FIRST PARAGRAPH OF THIS DOCUMENT WHERE
YOU TALK ABOUT STIPULATION OF THE PARTIES AND THE FAA IN
THE NBAA CASE.
DO YOU SEE THAT?
A YES.
Q THE FAA WAS NOT A PARTY TO THAT CASE;
CORRECT?
A NO, THEY WERE NOT. I THINK I MENTIONED WHO
1 THE PARTIES WERE EARLIER.
2 Q OKAY. TURN TO PAGE 3 OF THIS DOCUMENT.
3 THAT'S SECTION MARKED "BACKGROUND STATEMENT OF THE
4 PROBLEM."
5 A YES.
6 Q OKAY. IT INDICATES:
7 "THE SANTA MONICA AIRPORT HAS BEEN THE
8 CENTER OF LEGAL AND POLITICAL DISPUTES FOR
9 MANY YEARS. THESE DISPUTES HAVE INVOLVED
10 THE CITY, THE FAA, VARIOUS AVIATION
11 ASSOCIATIONS."
12 DO YOU SEE THAT?
13 A YES, I DO.
14 Q DOES THAT REFER AT LEAST IN PART TO THE SANTA
15 MONICA AIRPORT ASSOCIATION?
16 A I BELIEVE, YES, IT DOES. ALSO THE NATIONAL
17 AVIATION ASSOCIATIONS AS WELL AS THE SMAA.
18 Q TURN TO PAGE 14.
19 A WHERE IT SAYS "GENERAL PROVISIONS"?
20 Q YES. PROVISION NO. 4 INDICATES:
21 "ANY AGREEMENT WITH THE FAA WOULD
22 SUPERSEDE ALL INCONSISTENT PROVISIONS OF
23 OTHER AGREEMENTS BETWEEN THE UNITED STATES
24 AND THE CITY."
25 A YES.
26 Q "THE PARTIES WOULD RELEASE EACH OTHER FROM
27 LIABILITY AND SETTLE ALL LEGAL DISPUTES
28 REGARDING THE AIRPORT"?
A  YES.

Q  THAT WAS THE INTENT?

A  IT'S A MUTUAL THING. IT'S A FAIRLY STRAIGHTFORWARD MUTUAL RELEASE BETWEEN THE CITY AND THE FAA.

Q  THIS STAFF REPORT PRESENTS MOST OF THE FEATURES OF THE '84 AGREEMENT, DOES IT NOT?

A  I WOULD THINK THAT IT WOULD. BUT LET ME -- IF I COULD LEAF THROUGH IT, I COULD VERIFY THAT.

YES, IT DOES. IT HAS THE THREE TIERED PERFORMANCE-BASED NOISE LIMIT.

Q  RIGHT. AND THIS IS IN --

A  AND THE GOLF COURSE TURN.

Q  THIS WAS -- NOVEMBER 8TH, 1983 IS THE DATE OF THIS; CORRECT?

A  YES.

Q  AND THAT'S AT THE END OF THE PLANNING PROCESS; CORRECT?

A  THAT'S CORRECT.

Q  LET ME DIRECT YOUR ATTENTION TO EXHIBIT 510.

A  OKAY.

Q  THESE ARE MINUTES OF A CITY COUNCIL MEETING OF NOVEMBER 15, 1983; CORRECT?

A  IT APPEARS THAT WAY. THERE'S A RECEIPT BLOCKING THE THING. SO IT SAYS "VICTIM."

Q  TURN TO THE SECOND PAGE.

A  YEAH, I THINK -- YES, THAT'S -- THE SECOND PAGE CLEARLY SAYS IT'S NOVEMBER 15TH, 1983 MINUTES.
Q OKAY. AND IF YOU TURN TO PAGE 4, THE CITY COUNCIL ACCEPTS THE ENVIRONMENTAL IMPACT REPORT AND AIRPORT LAYOUT CONCEPT PLAN AND NOISE MITIGATION PROGRAM; CORRECT?
A YES, IT DOES.
Q IT ALSO RESCINDS THE -- WELL, I'M SORRY. TURN TO EXHIBIT 511.

DO YOU SEE THAT? 511?
A THAT'S THE RESOLUTION APPROVING THE AIRPORT PLAN.

Q YES. AND SECTION 4 OF THIS RESOLUTION REPEALED RESOLUTION 6296 WHICH WAS THE CITY'S INTENT TO CLOSE THE AIRPORT AS SOON AS POSSIBLE; CORRECT?
A THAT'S WHAT IT DOES, YES.

I NOTE THAT IN THE MINUTES IT SAYS THAT THE ADOPTION OF THE RESOLUTION FOR THE NOISE PROGRAM IS DEFERRED UNTIL NEGOTIATIONS WITH THE FAA HAVE BEEN CONCLUDED AND AUTHORIZES NEGOTIATION FOR THE CONTRACT WITH THE FAA.

I THINK THAT THE CONTRACT WOULD HAVE BEEN PRETTY WELL DRAFTED AT THAT TIME BY THE LANGUAGE OF THE MINUTES.

MR. KIRSCHBAUM: NOTHING FURTHER, YOUR HONOR.

THE COURT: DO YOU HAVE ANYTHING?

MR. TACHIKI: JUST ONE QUICK QUESTION.
REDIRECT-EXAMINATION

BY MR. TACHIKI:

Q  EARLY ON DIRECT EXAMINATION, WHEN JUDGE HILL ISSUED HIS DECISION IN THE SMAA CASE, HE ALSO MADE A RULING ON SMAA STATUS AS THIRD PARTY BENEFICIARY?

A  YES, HE DID.

Q  DO YOU REMEMBER WHAT HIS RULING WAS?

A  HE REJECTED, AS IN THE NEGOTIATION, THAT THEY WERE THIRD PARTY BENEFICIARIES AND HAD ANY INDEPENDENT STANDING IN THE CONTRACT. I THINK YOU'LL FIND IT PROBABLY IN THE LAST PARAGRAPH OF HIS ORDER.

Q  AND IN FACT, IT'S ONE -- LET ME STRIKE THAT.

Q  THAT WAS ONE OF THE CHALLENGES ON THE STANDING GROUNDS, WASN'T IT, THAT THIRD PARTY STATUS?

A  THAT WAS ONE OF THE CHALLENGES, YES.

MR. TACHIKI: OKAY. THANK YOU.

I HAVE NOTHING FURTHER.

RECROSS-EXAMINATION

BY MR. KIRSCHBAUM:

Q  THE COURT DID FIND THAT THE AIRPORT ASSOCIATION HAD SOME STANDING BECAUSE IT INVALIDATED THE JET BAN; CORRECT?

YES, THEY HAD STANDING TO CHALLENGE THE JET BAN AND THE ORDINANCES BUT NOT AS THIRD PARTY BENEFICIARIES TO THE CONTRACT.

MR. KIRSCHBAUM: NOTHING FURTHER.

THE COURT: ALL RIGHT. THANK YOU, SIR.

THE WITNESS: THANK YOU VERY MUCH, SIR.

THE COURT: ALL RIGHT.

COME BACK AT 1:45.

(LUNCH RECESS WAS TAKEN.)
THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD IN THIS CASE.

CONTINUE.

MR. KIRSCHBAUM: YES, YOUR HONOR. AT THIS POINT, WE WOULD LIKE TO CALL CAPTAIN BARRY SCHIFF, S-C-H-I-F-F.

BARRY SCHIFF,
CALLED AS A WITNESS BY THE PLAINTIFFS,
WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE SWORN.

YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: THANK YOU. PLEASE HAVE A SEAT.
COULD WE HAVE YOU STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

THE WITNESS: BARRY SCHIFF, S-C-H-I-F-F.

THE CLERK: THANK YOU.

DIRECT EXAMINATION

BY MR. KIRSCHBAUM:

Q MR. SCHIFF, COULD YOU BRIEFLY DESCRIBE FOR THE COURT YOUR RELEVANT AVIATION BACKGROUND?

A OH, WELL, I STARTED FLYING AT SANTA MONICA AIRPORT WHEN I WAS 14 YEARS OLD.

Q WHEN WAS THAT?


BUT I'VE BEEN FLYING SMALL AIRPLANES FROM SANTA MONICA AIRPORT THROUGHOUT MY 50-YEAR AVIATION CAREER. I'M AN AVIATION WRITER FOR THE LEADING AVIATION MAGAZINE IN THE WORLD. IT'S CALLED AOPA PILOT MAGAZINE. AND I'VE WRITTEN ABOUT ALMOST 1200 ARTICLES OVER THE YEARS FOR THAT MAGAZINE AS WELL AS A DOZEN BOOKS ON AVIATION SAFETY TECHNIQUE AND PROCEDURE.

Q ABOUT HOW MANY FLIGHT HOURS DO YOU BELIEVE YOU HAVE?

A 26,200.

Q AND HOW MANY DIFFERENT KINDS OF AIRPLANES HAVE YOU FLOWN?

A 276.
Q AND HAVE YOU BEEN ENGAGED TO RENDER OPINIONS
AS AN EXPERT IN AVIATION-RELATED SUBJECTS?
A YES. I'VE WORKED AS AN EXPERT WITNESS IN
AVIATION LITIGATION MATTERS FOR 30 YEARS APPROXIMATELY.
Q ABOUT HOW MANY CASES HAVE YOU BEEN INVOLVED
WITH OVER 30 YEARS RELATING TO YOUR EXPERT WITNESS
QUALIFICATIONS?
A WELL, I'VE PROBABLY BEEN INVOLVED IN
HUNDREDS, BUT I'VE ONLY HAD TO TESTIFY IN PERHAPS 150,
125.
Q OKAY. ARE YOU A MEMBER OF THE SANTA MONICA
AIRPORT ASSOCIATION?
A YES, SIR.
Q HOW LONG HAVE YOU BEEN A MEMBER OF THE SANTA
MONICA AIRPORT ASSOCIATION?
A SINCE ITS INCEPTION. I'VE ALSO BEEN A
DIRECTOR OF THE ASSOCIATION FOR A NUMBER OF YEARS, AND
I'VE BEEN CHAIRMAN OF THE BOARD FOR THE LAST TEN OR SO
YEARS.
Q IN THE LATE '70S TIMEFRAME, WERE YOU THE
PRESIDENT OF THE SANTA MONICA AIRPORT ASSOCIATION?
A YES, SIR, I WAS.
Q AND AT THAT TIME, DID THE SANTA MONICA
AIRPORT ASSOCIATION FILE SUIT AGAINST THE CITY OF SANTA
MONICA IN FEDERAL DISTRICT COURT CHALLENGING VARIOUS
NOISE RELATED ORDINANCES?
A YES, IT DID.
Q AND AT THE TIME THAT THE AIRPORT ASSOCIATION
FILED SUIT, WERE YOU PRESIDENT?
A    YES, SIR.
Q    AND YOU ARE FAMILIAR WITH THE -- WHAT WE'LL REFER TO AS THE 1977 JET BAN CASE?
A    YES, SIR. I TESTIFIED IN JUDGE HILL'S COURT IN THAT MATTER.
Q    WHAT DID YOU TESTIFY ABOUT IN JUDGE HILL'S COURT MATTER?
A    I TESTIFIED AS AN EXPERT WITNESS AS TO THE NATURE OF AIRCRAFT NOISE.
Q    SUBSEQUENT TO THE RULING IN JUDGE HILL'S TRIAL COURT INVALIDATING THE JET BAN, DID YOU BECOME AWARE OF AN ORDINANCE THAT THE CITY OF SANTA MONICA PASSED LOWERING THE SINGLE EVENT NOISE LIMIT FROM 100 DECIBELS TO 85 DECIBELS?
A    YES, SIR.
Q    HOW DID YOU BECOME AWARE OF THAT?
A    I DON'T RECALL HOW I BECAME AWARE OF IT, BUT IT BECAME COMMON KNOWLEDGE FAIRLY QUICKLY.
Q    AND IN RESPONSE TO THE 85 DECIBEL ORDINANCE, DID YOU BECOME AWARE THAT A LAWSUIT IN FEDERAL COURT, IN JUDGE HILL'S COURT ONCE AGAIN, WAS FILED TO SEEK TO ENJOIN THAT ORDINANCE?
A    YES.
Q    DO YOU REMEMBER WHO BROUGHT THAT LAWSUIT?
A    I BELIEVE IT WAS SANTA MONICA AIRPORT ASSOCIATION.
Q    WOULD IT HELP IF I REFRESHED YOUR
RECOLLECTION AND TOLD YOU THAT IT WAS THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION AND GENERAL AIRCRAFT MANUFACTURING ASSOCIATION?

A WELL, IT WOULD, BUT THEY REALLY BROUGHT IT FORTH ON OUR BEHALF.

Q WHY DO YOU SAY THEY BROUGHT IT ON YOUR BEHALF?

A BECAUSE THEY HAD MORE TO LOSE THAN WE DID AS THE ASSOCIATION. THE ASSOCIATION AT THAT TIME CONSISTED MAINLY OF MEMBERS WITH SMALL AIRPLANES, WHEREAS THE GENERAL AVIATION MANUFACTURERS ASSOCIATION, GAMA AND NBAA, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, FORESAW THE EXPANDING OF THE JET FLEET. AND THEY DIDN'T WANT TO SEE A NOISE LIMIT LIKE THAT IMPEDE THE PROGRESS OF INTERSTATE COMMERCE.

Q DID YOU HAVE ANY PERSONAL INTERACTION WITH ANYBODY AT GAMA OR NBAA REGARDING THE 85 DECIBEL NOISE LIMIT?

A YES, SIR.

Q WHEN DID YOU FIRST HAVE THAT CONTACT?

A OH, BOY. I DON'T RECALL SPECIFICALLY. IT WASN'T TOO LONG AFTER THE SUIT WAS FILED.

Q DO YOU KNOW WHO YOU TALKED WITH?

A I BELIEVE IT WAS STAN GREEN AT GAMA. HE WAS THE ATTORNEY FOR GAMA.

Q AND DID THE SANTA MONICA AIRPORT ASSOCIATION COOPERATE WITH GAMA AND NBAA IN THE PROSECUTION OF THAT LAWSUIT?
A: Yes, we did.

Q: How did you do that?

A: They needed substantial information and documentation that we had and they did not have. And we provided that in assistance to them, because we were locally based and they were not.

Q: And the airport association provided that assistance?

A: Yes.

Q: Following the injunction which prohibited the enforcement of the 1981 -- I'm sorry. Let me start that question again.

Following the injunction that prohibited the enforcement of the 85 decibel noise ordinance, did you become aware of a further resolution on the part of the city of Santa Monica seeking to close the Santa Monica airport?

A: I certainly was. It was like a bombshell.

Q: How did you become aware of it?

A: I think I read about it in the Santa Monica Outlook, but word spread quickly. Everybody knew about it very rapidly.

Q: What did you do when you heard that the city was going to try and close the Santa Monica airport?

A: Well, that's -- that covers all our testimony. But basically, we met as an organization and tried to put forth a battle plan to do whatever would be necessary to prevent the city from closing the airport.
WE REALLY KNEW THAT OR BELIEVED THAT THE CITY
COULDN'T CLOSE THE AIRPORT BASED ON THE 1948 INSTRUMENT
OF TRANSFER, AND YET WE DIDN'T HAVE ANY POWER TO SUED THE
CITY ON THE BASIS OF THAT.
I WENT TO WASHINGTON D.C. AND MET WITH JAY
LYNNE HELMS, WHO WAS THEN THE ADMINISTRATOR OF THE FAA,
AND SPENT TWO HOURS WITH HIM. AND HE SAID, "BARRY," HE
SAID, "WE'RE READY TO STAND BEHIND YOU," HE SAID. "BUT
YOU NEED TO FILE A PART 13 ADMINISTRATIVE ACTION AND
THAT WILL GET US INVOLVED."
Q LET ME JUST STOP YOU RIGHT THERE FOR A
SECOND. JAY LYNNE HELMS, THE ADMINISTRATOR OF THE FAA,
THAT'S THE TOP GUY OF THE FAA?
A YES, SIR. YES, SIR. HE REPORTED ONLY TO THE
SECRETARY OF TRANSPORTATION.
Q AND YOU PERSONALLY MET WITH HIM?
A YES, SIR, FOR TWO HOURS.
Q AND DISCUSSED THE CIRCUMSTANCES OF THE CITY
ATTEMPTING TO CLOSE THE AIRPORT?
A YES, SIR.
Q AND DID I HEAR YOU ACCURATELY, DID HE
INSTRUCT YOU TO FILE A COMPLAINT?
A HE DIDN'T INSTRUCT IT. HE PROBABLY SUGGESTED
IT. HE SAID IT WOULD BE NECESSARY FOR THAT ACTION TO BE
FILED BEFORE THE FAA COULD GET INVOLVED OR WOULD GET
INVOLVED. I'M NOT SURE WHICH.
Q LET ME SHOW YOU A DOCUMENT THAT'S BEEN MARKED
AS EXHIBIT 474. THAT WILL BE IN VOLUME NO. 9.
MR. KIRSCHBAUM: MAY I APPROACH, YOUR HONOR?

THE COURT: YES.

THE WITNESS: WHICH NUMBER WAS THAT?

MR. KIRSCHBAUM: 474.

Q THIS APPEARS TO BE THE AIRPORT ASSOCIATION'S COMPLAINT UNDER PART 13 DATED JANUARY 13, 1982. WOULD YOU AGREE?

A YES.

Q OKAY. IS THIS THE COMPLAINT THAT THE AIRPORT ASSOCIATION FILED FOLLOWING YOUR MEETING WITH THE DIRECTOR OF THE FAA?

A WITH THE ADMINISTRATOR OF THE FAA.

Q I'M SORRY.

A YES, IT IS.

Q ADMINISTRATOR OF THE FAA.

A YES.

Q AND DO YOU RECALL THAT THE BASIS FOR THE FILING OF THIS PART 13 ACTION WAS THE 1948 INSTRUMENT OF TRANSFER?

A YES.

Q DID YOU DISCUSS THAT WITH THE ADMINISTRATOR?

A YES, SIR.

Q AND COULD YOU ADVISE -- TELL THE COURT WHAT THE SUBSTANCE OF THE CONVERSATION WITH THE ADMINISTRATOR RELATING TO THAT CONVERSATION ABOUT THE '48 INSTRUMENT OF TRANSFER WAS?

A WELL, I'M NOT SURE THAT I CAN RECALL ANY SPECIFIC DETAILS OF THE CONVERSATION. IT WAS AFTER ALL
ABOUT A QUARTER OF A CENTURY AGO, ALMOST.

I DON'T RECALL. I SIMPLY WENT IN THERE BEGGING AND PLEADING FOR THE FAA TO BACK UP THE CITIZENS' RIGHTS FOR THE AIRPORT. AND IT HAD, I BELIEVE, EVERY LEGAL RIGHT TO DO SO, THAT THE CITY SHOULD NOT BE ALLOWED TO CLOSE THE AIRPORT BASED ON ITS OBLIGATIONS TO THE FEDERAL GOVERNMENT, AND HE BASICALLY AGREED. AND HE SAID, "OKAY, BUT HERE'S WHAT YOU NEED TO DO."

I DID THAT, AND AFTER THE PART 13 SECTION WAS FILED, I WAS CALLED SEVERAL TIMES BY BILL SHEA, THE ASSOCIATE ADMINISTRATOR OF THE FAA, WANTING ALL KINDS OF DOCUMENTATION AND INFORMATION THAT WE HAD THAT WOULD BE OF ASSISTANCE TO THE FAA IN ITS INTERVENTION IN THIS MATTER. AND I MADE ANOTHER TRIP BACK TO WASHINGTON AND PROVIDED THAT MATERIAL TO HIM PERSONALLY.

Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 476 IN THAT SAME VOLUME. THIS IS A LETTER DATED FEBRUARY THE 4TH, 1982, FROM THE FAA TO THE AIRPORT ASSOCIATION. IT'S DIRECTED TO PAUL BLACKMAN.

A RIGHT.

Q HE'S REFERENCED AS PRESIDENT.

DO YOU SEE THAT?

A YES.

Q DOES THAT MEAN THAT YOU HAD SOME DIFFERENT OFFICE AT THE AIRPORT ASSOCIATION?

A THERE WERE YEARS WHERE I WAS AND WAS NOT PRESIDENT, AND PAUL BLACKMAN WASN'T FOR SOME OF THOSE
YEARS. AND AT THOSE TIMES WHEN I WAS NOT, I WAS CHAIRMAN OF THE BOARD. BUT I'VE HELD OFFICE IN THE ASSOCIATION EVER SINCE THE LATE '70S.

Q THIS LETTER SEEMS TO ASK FOR ADDITIONAL INFORMATION IN THE FIRST PARAGRAPH. DO YOU SEE THAT?

A YES.

Q THE INFORMATION THAT YOU PERSONALLY BROUGHT BACK TO WASHINGTON D.C., WAS THAT RESPONSIVE TO THIS REQUEST?

A YES, IN PART.

Q WHAT KIND OF INFORMATION DID YOU BRING BACK?

A OH, GOSH. I DON'T RECALL SPECIFICALLY. IT WAS JUST A BUNCH OF DOCUMENTATION AND RECORDS THAT WE HAD REGARDING THE AIRPORT, ITS HISTORY, AND WHAT WE BELIEVE TO BE THE FOUNDATION FOR THE FAA'S INTEREST IN MAINTAINING THE AIRPORT.

Q WAS THERE EVER ANYTHING THAT THE FAA ASKED YOU FOR THAT YOU DIDN'T PROVIDE TO THEM?

A NO.

Q IN RESPONSE TO PROVIDING THIS INFORMATION TO THE FAA, WHAT DID THEY THEN DO?

A THEY CONTACTED THE CITY AND SAID, "WE BETTER SIT DOWN AND TALK ABOUT THIS." AND THE CITY SAID, "OKAY."

Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 481, ALSO IN THIS VOLUME.

THE FIRST PAGE OF THIS EXHIBIT IS AN
APRIL 2ND, 1982 LETTER TO THE CITY ATTORNEY FROM THE DEPARTMENT OF TRANSPORTATION, AND THE SECOND PAGE IS AN APRIL 14, 1982 RESPONSE BACK TO THE DEPARTMENT OF TRANSPORTATION FROM THE CITY ATTORNEY.

Is that what you just referenced?

A Yes. There were phone calls as well.

Q And when the FAA asked the City or advised the City as in Exhibit 481 and the City responded that they would be willing to negotiate, did you then have further contact with the FAA regarding airport negotiations?

THE COURT: Would you hold on a minute, please.

Okay. Go ahead.

MR. KIRSCHBAUM: Thank you.

Q Following these April letters, did you have further contact with the FAA?

A Yes. We had contact with the FAA up until the signing of the 1984 agreement.

Q Okay. Could you describe to the court what kind of contact you had with the FAA between the time of these April letters and the time that the working group started its meetings?

A Well, essentially, the FAA wanted to know what the users of the airport would be satisfied with. And since we, the association, represented the users, we felt in a good position to help form the eventual contract that would be signed between the City and the FAA.
WE HAD A LOT OF HELP THERE AS WELL. STAN GREEN, WHO WAS THE ATTORNEY FOR THE GENERAL AVIATION MANUFACTURER'S ASSOCIATION AND SENT TO SANTA MONICA ON THEIR BEHALF AS WELL AS OURS, WAS INVALUABLE IN DRAFTING THE AGREEMENT.

Q OKAY. AT SOME POINT IN 1983, DID A WORKING GROUP OF ABOUT A DOZEN OR SO PEOPLE COME INTO BEING TO DEAL WITH THE ISSUES RELATED TO PLANNING FOR THE NEW AIRPORT?

A YES.

Q AND WERE YOU A PART OF THAT WORKING GROUP?

A YES, I WAS.

Q AND ABOUT HOW MANY TIMES DID YOU MEET AS A PART OF THAT WORKING GROUP?

A OH, GEE. AT LEAST A DOZEN TIMES AND PERHAPS TWO DOZEN. I REALLY DON'T KNOW FOR SURE.

Q AND WHAT KIND OF THINGS WERE DEALT WITH IN THE WORKING GROUP MEETINGS?

A VIRTUALLY ALL OF THE ELEMENTS OF THE AGREEMENT THAT WOULD HAVE TO DO WITH THE NEIGHBORS AND THE USERS OF THE AIRPORT.

Q COULD YOU GIVE THE COURT THE EXAMPLES OF THE KINDS OF THINGS THAT WERE DISCUSSED?

A OPERATIONAL PROCEDURES, NOISE MATTERS, NOISE PROGRAMS. VIRTUALLY EVERY ASPECT OF THE CONTRACT WAS MULLED OVER AND DISCUSSED RATHER THOROUGHLY DURING THE USER GROUP MEETINGS, AND STAN GREEN WHO WAS AT THOSE MEETINGS AS WELL, THE ATTORNEY FROM GAMA, HELPED US TO
1 DETERMINE WHAT WOULD BE LEGAL, WHAT WOULD NOT, WHAT
2 SHOULD BE PRESENTED TO THE CITY, WHAT SHOULD NOT. AND
3 HE WOULD COME BACK WITH WHAT THE CITY HAD OFFERED, AND
4 WE WOULD TALK ABOUT THAT.
5 AND ULTIMATELY WE CAME TO SOME AGREEMENT THAT
6 WE FELT WOULD BE MUTUALLY BENEFICIAL TO BOTH SIDES.
7 Q AND WERE YOU INVOLVED IN ANY DISCUSSIONS
8 DIRECTLY WITH THE CITY?
9 A MANY.
10 Q COULD YOU DESCRIBE SOME OF THOSE DISCUSSIONS?
11 A WELL, THERE WERE A NUMBER OF MEETINGS BETWEEN
12 MYSELF; OTHER MEMBERS OF THE ASSOCIATION; AND JOHN
13 ALSCHULER, WHO IS THE MANAGER OF THE CITY; JOHN JALILI;
14 BOB MEYERS. I THINK IT WAS BOB -- I'M NOT SURE -- WHO
15 WAS THE CITY ATTORNEY. AND WE MET WITH A NUMBER OF
16 PEOPLE THROUGHOUT THE TIME.
17 Q MR. JALILI, HE WAS THE ASSISTANT CITY
18 MANAGER?
19 A I THINK SO, YES.
20 Q HE WAS ALSO THE ACTING AIRPORT DIRECTOR AT
21 THAT TIME?
22 A YES, HE WAS.
23 Q OKAY. AND DID YOU DEAL WITH THE ISSUES
24 RELATED TO THE SPECIFIC CONTENT OF THE '84 AGREEMENT?
25 A YES, WE DID.
26 Q OKAY. DID YOU DEAL WITH THE NUMBER OF Tie
27 Downs THAT WOULD BE REQUIRED FOR THE AIRPORT?
28 A YES, WE DID.
Q: Did you deal with the number of full service fixed base operators that would be required?
A: Yes. That was a major point.
Q: Did you deal with a displaced threshold at the airport?
A: Yes, we did.
Q: Did you deal with the noise program?
A: Oh, yes, extensively.
Q: In the working group meetings, were there discussions relating to the concept of a performance-based noise program?
A: Yes, there was.
Q: Could you describe for the court what a performance-based noise program is?
A: Basically what it means is there would be different tiers to the noise program such that loud airplanes would have to meet certain levels. But just because you were a quiet airplane didn't mean you would be allowed to make noise at your leisure. You would have to meet certain less requirements in noise standards so that the overall noise footprint surrounding the airport would be reduced.
Q: Was there discussion with regard to the installation of a precision approach at the airport?
A: Yes, something we had been lobbying for four years.
Q: Could you describe for the court what a precision approach is?
A PRECISION -- WELL, IT'S EASIER TO START WITH A NON-PRECISION APPROACH. THAT KIND OF AN APPROACH PROVIDES LEFT-RIGHT GUIDANCE FOR A PILOT SO HE CAN FIND THE AIRPORT. A PRECISION APPROACH ADDS ANOTHER DIMENSION, VERTICAL GUIDANCE, SO HE CAN DESCEND ALONG AN ELECTRONIC GLIDE PATH SAFELY TO THE AIRPORT.

THE COURT: WAS THIS DERIVED FROM THE LDA APPROACH WE DISCUSSED YESTERDAY?

THE WITNESS: THE --

MR. KIRSCHBAUM: THAT IS AN LDA APPROACH.

THE WITNESS: PRECISION APPROACH IS NOT AN LDA APPROACH.

THE COURT: WHAT'S THE ANSWER?
WE DISCUSSED AN LDA APPROACH YESTERDAY. ARE WE TALKING ABOUT THE SAME THING?

MR. KIRSCHBAUM: WE ARE GETTING ALONG THE SAME PATH TO THAT, YES, YOUR HONOR.

Q AN LDA IS ONE COMPONENT OF A PRECISION APPROACH; CORRECT?
A YES, IT IS.

Q THAT WOULD BE THE LEFT-RIGHT GUIDANCE PART OF THE APPROACH; CORRECT?
A YES. IT PROVIDES MORE PRECISE GUIDANCE THAN THE STANDARD NON-PRECISION APPROACH THAT WAS IN EFFECT AT THE TIME.

Q IN FACT, AT THAT TIME, WEREN'T THERE NEGOTIATIONS RELATING TO A MICROWAVE LANDING SYSTEM APPROACH AT SANTA MONICA?
A: Yes.

Q: And the LDA was to be an interim measure until the microwave landing system was installed?

A: That's correct.

Q: And in addition to that, there were other elements of the noise program that were discussed in the working group; correct?

A: Yes. Yes. There were many, many theories, whereas many possibilities. We came up with some, a few of which were totally ignored even though they were pragmatic and effective.

Q: And as a result of those negotiations, was an agreement reached?

A: Yes.

Q: And at the conclusion of the negotiations, did you have any discussions with either the FAA or the city as to whether or not the agreements that had been reached to that point would be acceptable to the airport association?

A: Yes. There were conversations dealing with all of those parties. In fact, each and every time the city and the FAA and GAMA came to an understanding as to an agreeable language for a given paragraph, they would come to us and say, "what do you think?" and much of the -- many of those paragraphs in terms and conditions were acceptable, many were not.

And as a result of our input and, I should say, outright rejection on a couple of occasions, GAMA
AND THE FAA WENT BACK AND SAID, "WE NEED TO RE-TAILOR THIS," AND THE CONTRACT WAS MODIFIED.

Q DID THE FAA SEEK YOUR -- AND BY YOUR, I MEAN AIRPORT ASSOCIATION APPROVAL FOR THE TERMS OF THE '84 AGREEMENT?

A YES. IT DID THIS THROUGHOUT THE PROCESS. IN FACT, BILL SHEA, WHO WAS THE FAA ADMINISTRATOR, CONTACTED US NUMEROUS TIMES THROUGHOUT THE PROCESS TO SEE HOW IT WAS GOING AND HOW HE COULD HELP.

Q DID YOU EVER HAVE ANY DISCUSSIONS WITH THE FAA ALONG THE LINES THAT THE '84 AGREEMENT WOULD BE RESOLVING THE AIRPORT ASSOCIATION'S COMPLAINT?

A THAT WAS OUR UNDERSTANDING, THAT THE AGREEMENT WOULD ELIMINATE THE NEED FOR THE PART 13 COMPLAINT AND WOULD EFFECTIVELY SATISFY US. AFTER ALL, IT WAS OUR GOAL TO KEEP THE AIRPORT OPEN CONTRARY TO THE CITY'S DESIRE TO CLOSE IT.

Q OTHER THAN THE AIRPORT ASSOCIATION, DO YOU KNOW OF ANY OTHER PARTY THAT FILED AN ACTION AGAINST THE CITY OF SANTA MONICA RELATING TO WHETHER TO KEEP THE AIRPORT OPEN OR NOT?

A NO, THERE WAS NO ONE.

Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 488.

A 488?

Q 488.

DO YOU HAVE IT?

A YES.

Q THIS IS A LETTER THAT YOU WROTE?
YES, SIR.

WERE THERE SEVERAL LETTERS THAT WENT BACK AND FORTH BETWEEN THE AIRPORT ASSOCIATION AND THE FAA?

YES. I'M CERTAIN THERE WERE.

AND IN THIS SECOND PARAGRAPH, IT TALKS ABOUT THE 4,000-FOOT RUNWAY PROPOSAL.

DO YOU SEE THAT?

YES.

WAS THAT ONE OF THE POINTS THAT THE AIRPORT ASSOCIATION SPECIFICALLY BARGAINED FOR IN THE NEGOTIATIONS LEADING TO THE '84 AGREEMENT?

WE FOUGHT BITTERLY AGAINST THAT, YES.

WHY?

BECAUSE IT WOULD LIMIT THE AIRPORT TO THE TYPE OF AIRCRAFT THAT COULD USE IT, AND IT WOULD REDUCE THE SAFETY FACTOR.

MR. KIRSCHBAUM: NOTHING FURTHER.

CROSS-EXAMINATION

BY MR. TACHIKI:

IF I COULD HAVE YOU OPEN TO 488. THIS LETTER IS DATED OCTOBER 27TH, 1982; IS THAT CORRECT?

YES.

DO YOU RECALL WHEN THE AIRPORT WORKING GROUP STARTED ITS WORK?

AFTER THIS, I BELIEVE.

AFTER THIS.

I THINK SO.
Q SO WOULD IT HELP YOU IF I TOLD YOU I THINK IT STARTED IN JANUARY OF 1983?

THE COURT: JANUARY 1983?

MR. TACHIKI: JANUARY OF 1983.

THE WITNESS: YEAH, THAT DOESN'T SURPRISE ME.

Q BY MR. TACHIKI: SO THIS CLEARLY COMES BEFORE THE WORKING GROUP STARTED ITS WORK; IS THAT CORRECT?

A YES. THIS WAS A REFLECTION OF THE FEELINGS OF THE AIRPORT ASSOCIATION.

Q SO THIS WASN'T PART OF THE AIRPORT WORKING GROUP DELIBERATION?

A IT MIGHT HAVE BEEN AT A LATER DATE.

Q BUT IT WAS NOT AT THIS TIME WHEN YOU WROTE THIS?

A IF THERE WERE NO WORKING GROUP, IT COULDN'T HAVE BEEN.

THE COURT: HOW MANY MEMBERS DID YOU HAVE AT THE SANTA MONICA AIRPORT ASSOCIATION AROUND OCTOBER OF 1982?

THE WITNESS: I'M NOT SURE. IT WOULD BE IN THE HUNDREDS.

THE COURT: HOW MUCH?

THE WITNESS: IN THE HUNDREDS.

Q BY MR. TACHIKI: COULD WE GO BACK TO EXHIBIT 476.

NOW, 476 IS THE LETTER THAT CAME BACK FROM THE FAA, AND AGAIN, IT'S ADDRESSED TO PAUL BLACKMAN; IS THAT CORRECT?

A YES.
Q AND YOU SAID THAT AT THE TIME THAT YOU WENT TO TALK TO THE FAA, YOU WERE THE PRESIDENT OF SMAA?
A OR THE CHAIRMAN OF THE BOARD. ONE OF THE TWO. I WAS ALWAYS ONE OF THE TWO.
Q SO WHEN YOU WENT BACK TO TALK TO THE FAA, YOU MAY HAVE NOT BEEN THE PRESIDENT. IS THAT WHAT YOU'RE SAYING NOW?
A I'M NOT CERTAIN. THIS WAS FEBRUARY 4TH OF '82. I'M NOT SURE BECAUSE WE HELD ELECTIONS USUALLY AT THE BEGINNING OF THE YEAR. SO I'M NOT SURE WHEN THE ELECTIONS WERE.
Q I WAS TRYING TO GET SOME CLARIFICATION. BECAUSE YOU HAD STARTED YOUR TESTIMONY OUT BY SAYING YOU WERE PRESIDENT OF SMAA WHEN YOU WENT TO GO TALK TO THE FAA.
A I THINK I WAS. I COULD HAVE BEEN CHAIRMAN OF THE BOARD. IN EITHER EVENT, I WENT BACK THERE REPRESENTING THE BOARD OF THE SANTA MONICA AIRPORT ASSOCIATION.
Q NOW, THE LETTER CAME TO BLACKMAN SAYING THAT THE PART 13 COMPLAINT THAT WAS FILED BY SMAA WAS INCOMPLETE?
A YES.
Q WOULD THIS LETTER ALSO HAVE GONE TO YOU?
A NO, IT WOULD HAVE GONE TO THE ASSOCIATION.
Q NOW -- AND THEN YOU SAID YOU WENT BACK AND MET WITH A BILL SHEA, AND YOU TOOK ADDITIONAL DOCUMENTS BACK TO SHOW HIM?
Q AND THAT WAS --
A NOT TO SHOW HIM. TO GIVE HIM UPON HIS REQUEST.
Q WAS THAT SPECIFICALLY IN RESPONSE TO THIS LETTER?
A I'M NOT CERTAIN, BUT I SUSPECT IT WAS BECAUSE THAT WAS THE PURPOSE OF THOSE MEETINGS.
Q OKAY.
A IT HAD TO DO WITH THE ACTION.
Q OKAY. DID SMAA AT ANY TIME AMEND THE COMPLAINT THEY FILED TO FILL IN THE GAPS THAT THE FAA FELT WERE IN THE LETTER?
A I DON'T RECALL.
Q SO YOU DON'T KNOW IF THERE WAS ANY FOLLOW-UP TO THE ORIGINAL COMPLAINT THAT WAS FILED?
A WELL, THERE WAS ALL KINDS OF FOLLOW-UP IN TERMS OF MEETINGS, DISCUSSIONS AND PROVIDING OF MATERIAL. BUT AS TO THE ACTUAL LEGAL MOVES THAT WERE MADE AT THAT TIME, I'M NOT QUITE SURE BEYOND THIS.
Q WELL, LET ME ASK YOU, HAVE YOU EVER SEEN A NEW COMPLAINT THAT WAS FILED AFTER THE ORIGINAL COMPLAINT IN THIS PART 13 ACTION?
A I DON'T RECALL.
Q YOU DON'T?
THE COURT: I JUST WANT TO BACK UP A SECOND. AS FAR AS THE PART 13 COMPLAINT, IT'S AN ADMINISTRATIVE PROCESS, I TAKE IT, AN ADMINISTRATIVE PROCEEDING?
MR. KIRSCHBAUM: CORRECT.

THE COURT: HOW WAS -- AS FAR AS THE FORMAL
COMPLAINT HERE, WHAT WAS ORIGINALY DONE WITH IT IN
TERMS OF WAS IT DISMISSED?

MR. KIRSCHBAUM: IN OUR OPINION, IT WAS RESOLVED
BY THE '84 AGREEMENT. IT WAS PENDING AT THE TIME.

THE COURT: WAS THERE SOME KIND OF FORMAL RULING
THAT WAS RENDERED ON THIS?

MR. TACHIKI: I THINK WHAT HAPPENED, YOUR HONOR,
WE FOUND NO DOCUMENTS AFTER THIS. SO WE HAVE TO ASSUME
THAT'S WHAT HAPPENED. THEY NEVER SUPPLIED THE
ADDITIONAL INFORMATION, AND THE COMPLAINT JUST
WITHERED.

MR. KIRSCHBAUM: I BELIEVE THAT'S CONTRADICTED BY
HIS TESTIMONY. BUT OUR POSITION IS THAT THIS IS ONE OF
THE ADMINISTRATIVE COMPLAINTS THAT'S SPECIFICALLY
REFERENCED IN THE '84 AGREEMENT.

THE COURT: THAT'S WHY MY QUESTION IS, WAS THERE
SOME KIND OF DISMISSAL FILED OF THE COMPLAINT?

APPARENTLY, THERE ISN'T.

MR. KIRSCHBAUM: THERE IS NONE.

MR. TACHIKI: I BELIEVE WHAT THE FAA DOES, IF YOU
DON'T SUPPLEMENT YOUR COMPLAINT, THERE IS NO FURTHER
ACTION.

THE COURT: DO THEY WRITE A LETTER?

MR. TACHIKI: I THINK THIS IS THE LETTER. YOU CAN
SUBMIT THE ADDITIONAL INFORMATION, WE WILL SERVE, BUT
UNTIL WE GET IT, WE WILL TAKE NO FURTHER ACTION.
THE COURT: HOLD ON A MOMENT.

THE WITNESS: MAY I MAKE A COMMENT?

THE COURT: JUST A MINUTE.

ALL RIGHT. THE FIRST PARAGRAPH, LET ME DIRECT THIS QUESTION TO YOU, MR. SCHIFF.

THE FIRST PARAGRAPH, IN THIS CASE THEY WERE IN RECEIPT OF THE COMPLAINT AND PENDING THE RECEIPT OF THE INFORMATION REQUIRED TO BE SUBMITTED, I GUESS, IS WHAT THEY'RE HOLDING ONTO.

DID THE SMAA SUBMIT ANY ADDITIONAL INFORMATION AFTER THIS LETTER?

THE WITNESS: QUITE A BIT. THAT WAS SOME OF THE INFORMATION PROVIDED TO MR. SHEA, THE ASSOCIATE ADMINISTRATOR, DURING MY SECOND VISIT TO WASHINGTON.

THE FAA RESPONDED TO THIS IN A WAY THAT CERTAINLY INDICATES THAT THIS ACTION WAS IN EFFECT BECAUSE THEY CONTINUED TO PURSUE AND WORK WITH THE AIRPORT ASSOCIATION IN ULTIMATELY ARRIVING AT A CONTRACT THAT RESOLVED THE DIFFERENCES, THAT BEING THE 1984 AIRPORT AGREEMENT.

THE COURT: OKAY, MR. TACHIKI. GO AHEAD.

MR. TACHIKI: OKAY.

Q I JUST WANTED TO CONFIRM ONE MORE TIME THAT YOU, TO YOUR KNOWLEDGE, HAD NEVER SEEN A FOLLOW-UP COMPLAINT TO THE ORIGINAL COMPLAINT FILED WITH THE FAA; IS THAT CORRECT?

A I DON'T RECALL ONE, NO.

Q NOW, WHEN YOU STARTED YOUR TESTIMONY, YOU
1 WERE TALKING ABOUT THE TWO DIFFERENT LAWSUITS THAT WERE
2 FILED IN THE EARLY -- OH, ACTUALLY LATE '70s. ONE WAS
3 FILED BY THE SANTA MONICA AIRPORT ASSOCIATION; IS THAT
4 CORRECT?
A YES.
Q THERE WAS A SECOND LAWSUIT THAT WAS FILED BY
7 THE NATIONAL BUSINESS AIRCRAFT ASSOCIATION?
A I THINK SO, YES.
Q AND THE NBAA LAWSUIT, YOU THINK, WAS FILED ON
10 BEHALF OF SANTA MONICA, SANTA MONICA AIRPORT
11 ASSOCIATION?
A AS I RECALL, IT WAS A RESULT OF OUR
13 INSTIGATING. WE DID QUITE A BIT OF SHOUTING AND YELLING
14 AT THE VARIOUS ALPHABET GROUPS. THAT'S HOW WE GOT A
15 AOPA TO ANIMUS CURIAE IN THIS MATTER, IN THE 1984
16 AGREEMENT, AND HOW WE GOT GAMA AND NBAA TO FIGHT -- ON
17 BOARD TO FIGHT THE CITY, BECAUSE WE COULDN'T DO IT
18 ALONE.
Q IS THERE A REASON WHY THE SANTA MONICA
20 AIRPORT ASSOCIATION DIDN'T HAVE THEMSELVES NAMED AS A
21 PLAINTIFF IN THE SECOND ACTION CHALLENGING THE '85 DB
22 ORDINANCE?
A I'M SURE WE FOLLOWED ADVICE OF COUNSEL, AND
24 I'M NOT SURE WHY WE DID OR DID NOT HAVE OUR NAMES.
25 FOR EXAMPLE, IN THE SUIT THAT WE FILED ON
26 BEHALF OF TENANTS WHO WERE GOING TO BE EVICTED, WE
27 DIDN'T NAME OURSELVES AS A PLAINTIFF EITHER, BUT CLEARLY
28 WE FILED A SUIT ON THEIR BEHALF TO PROTECT THEIR
INTEREST AS USERS OF THE AIRPORT, TENANTS OF THE AIRPORT.

SO WE DID THIS ACCORDING TO THE ADVICE OF COUNSEL, AND I CAN'T EXPLAIN WHY OR WHY NOT CERTAIN THINGS MIGHT HAVE BEEN DONE AT THAT TIME. WE'RE TALKING A QUARTER OF A CENTURY AGO, AND I CERTAINLY DON'T RECALL ALL OF THE REASONS THAT COUNSEL MIGHT HAVE PROVIDED TO US FOR DOING THINGS OR NOT DOING THINGS IN A CERTAIN WAY AT THAT TIME.

Q OKAY. LET ME GET OFF THE TOPIC JUST A SECOND.

YOU JUST MENTIONED THAT IN THE STATE COURT LAWSUIT, THAT THAT LAWSUIT TO STOP THE EVICTIONS WAS NOT FILED IN THE NAME OF THE SANTA MONICA AIRPORT ASSOCIATION?

A NO, BUT WE FILED IT. THAT'S WHAT I RECALL.

Q SO IT WAS FILED IN SOMEBODY ELSE'S NAME?

A YES, I BELIEVE SO, AND ON BEHALF OF TENANTS WHO WERE GOING TO BE EVICTED. I DON'T THINK WE ANTICIPATED THIS TRIAL 25 YEARS LATER.

Q YOU SAID THAT YOU WERE AN ACTIVE PARTICIPANT IN THE AIRPORT WORKING GROUP; IS THAT CORRECT?

A YES, SIR.

Q OKAY. DID YOU VIEW THE AIRPORT WORKING GROUP MEETINGS TO BE SEPARATE FROM THE ACTUAL DISCUSSIONS REGARDING THE WORDING OF THE 1984 AGREEMENT?

A WELL, SOME OF THAT TOOK PLACE IN THE WORKING GROUP AND SOME OUTSIDE THE WORKING GROUP.
Q Didn't you say that in your deposition that you thought that the basic elements of the 1984 agreement had been settled basically by around April or May of 1983?

A Might have been.

Basic elements is a far cry from crossing the T's and dotting the I's, though. The city kept trying to slip things in on us, and they weren't being very clear about it.

Q Okay. But in your deposition, you said -- you had said -- I can read it to you if you want. You said in May 1983 you thought that's the point when the negotiations on the actual draft of the 1984 agreement began?

A I'm not certain of the dates. I'm really not.

Q Do you recall the process coming to an end in November of 1983?

A I remember the process coming to an end when the contract was signed.

Q Well, do you remember sitting down in a room with the FAA and the city and negotiating the actual wording of the 1984 agreement?

A That never occurred, to the best of my knowledge, although it certainly might have.

Our involvement was with Stan Green who was the attorney from GAMA who was working with the attorneys from the FAA, and he kept coming to us wanting
1 TO KNOW IS THIS OKAY, IS THIS OKAY, IS THAT OKAY? AND
2 WE GIVE HIM REASONS WHY THEY WERE OR WERE NOT OKAY, AND
3 WE HAD TO SUBMIT CONSIDERABLE INPUT TO THESE CONDITIONS
4 BEFORE THEY WERE FINALIZED.
5 Q SO YOUR INPUT INTO THE ACTUAL NEGOTIATIONS OF
6 THE 1984 AGREEMENT, ACCORDING TO YOUR UNDERSTANDING, WAS
7 THROUGH MR. GREEN WHO WOULD THEN TRANSMIT THAT TO THE
8 FAA?
9 A NO. WE ALSO HAD DISCUSSIONS WITH THE FAA,
10 MR. MURDOCH AND MR. CIRRUZI AND -- THEY ARE THE TWO TOP
11 ATTORNEYS OF THE FAA.
12 THE COURT: WHEN YOU SAY "WE PERSONALLY HAD
13 DISCUSSIONS," YOU MEAN YOU PERSONALLY WERE INVOLVED?
14 THE WITNESS: YES.
15 THE COURT: DID YOU EVER HAVE MEETINGS WITH THE
16 CITY OF SANTA MONICA ITSELF?
17 THE WITNESS: SURE.
18 THE COURT: WHO WOULD YOU MEET WITH?
19 THE WITNESS: ALSCHULER -- MR. ALSCHULER,
20 MR. MEYERS, WHO WAS THE ATTORNEY, AND MR. JALILI --
21 PRIMARILY THOSE THREE. I HAD MEETINGS WITH RUTHIE
22 GOLDWAY, THE MAYOR.
23 Q BY MR. TACHIKI: DID THOSE MEETINGS OCCUR
24 BETWEEN NOVEMBER OF 1983 AND JANUARY OF 1984?
25 A I DON'T RECALL SPECIFICALLY DATES, MARTY. I
26 REALLY DON'T. BUT IT WAS ALL IN THE PROCESS OF LEADING
27 UP TO THE SIGNING OF THE CONTRACT. I MEAN, SO MUCH
28 HAPPENED, I CAN'T PINPOINT SPECIFICALLY WHICH MONTHS
THEY WERE AT THIS TIME.

Q SO THESE MEETINGS COULD HAVE OCCURRED, SAY, BETWEEN JANUARY AND NOVEMBER OF 1983 ALSO?

A WELL, THERE WERE MEETINGS THAT OCCURRED DURING THAT PERIOD.

Q BUT AS OF RIGHT NOW, YOU CAN'T ACTUALLY PINPOINT WHEN THESE MEETINGS ACTUALLY OCCURRED?

A I CAN'T PINPOINT THEM. I JUST KNOW THEY OCCURRED. AND THERE WERE MANY OF THEM. AND IT WASN'T JUST ME, IT WAS MR. BRANDSEN, MR. BARTON. IT WAS OTHER MEMBERS, LONG-STANDING MEMBERS OF THE BOARD OF DIRECTORS.

Q NOW, WAS IT YOUR BELIEF THAT THE FAA WAS REPRESENTING SMAA ON THE NEGOTIATIONS?

A ABSOLUTELY.

Q DID THEY TELL YOU THAT DIRECTLY?

A WELL, THEY DIDN'T COME OUT AND SAY, "WE ARE REPRESENTING YOU." THEY CAME TO FIGHT FOR US ON BEHALF OF THE 1948 INSTRUMENT OF TRANSFER. THEY WERE FIGHTING FOR US TO KEEP THE AIRPORT. THAT WAS OUR GOAL.

I DON'T KNOW HOW YOU CAN ISOLATE THEIR INTENTION AND DEFINE IT. ALL I KNOW IS THE ADMINISTRATOR OF THE FAA SAID, "LOOK, YOU FILE A PART 13 ACTION, WE'LL BE THERE FOR YOU."

NOW, YOU TELL ME WHAT THAT MEANS.

Q WELL, DID YOU VIEW THE FAA AS BEING INVOLVED IN DEFENDING THEIR OWN INTERESTS IN THESE NEGOTIATIONS OF THE 1984 AGREEMENT?
A WELL, THE INTEREST OF THE FAA OF KEEPING THE AIRPORT WERE IDENTICAL TO THE AIRPORT ASSOCIATION. WE ALL WANTED TO KEEP THE AIRPORT OPEN.

Q SO IN FACT, THE FAA'S POSITION WAS SIMILAR TO YOUR POSITION. YOU FEEL THAT, IN FACT, MADE THEM YOUR REPRESENTATIVE?

A YOU'RE MISSTATING WHAT I'M SAYING. I DIDN'T SAY THAT. I TESTIFIED AS TO WHAT I BELIEVE TO BE THE CASE. BUT THE FAA CAME TO OUR AID TO HELP US KEEP THAT AIRPORT OPEN. OBVIOUSLY, THEY HAD THEIR OWN INTERESTS IN DOING SO AS WELL.

Q BUT NOBODY EVER DIRECTLY SAID TO YOU AS A REPRESENTATIVE OF SMAA THAT THE FAA WAS REPRESENTING YOUR INTEREST IN THESE NEGOTIATIONS?

A WELL, THAT'S WHAT WE WERE CERTAINLY LED TO BELIEVE.

Q BUT NOBODY DIRECTLY TOLD YOU THAT?

A I DON'T KNOW. YOU'RE ASKING ME TO COME UP WITH SOMETHING SOMEBODY MIGHT HAVE SAID SPECIFICALLY 25 YEARS AGO. I DON'T KNOW. BUT THEIR ACTIONS SPOKE LOUDER THAN ANY WORDS YOU WANT TO HAVE ME SAY.

Q WHEN YOU NEGOTIATED THE 1984 AGREEMENT --

MR. KIRSCHBAUM: OBJECTION --

Q BY MR. TACHIKI: -- DID YOU HAVE AN ATTORNEY REPRESENT YOU?

THE COURT: HOLD IT. ONE AT A TIME, PLEASE.

MR. KIRSCHBAUM: I SHOULD STATE AS A FORMAL OBJECTION, VAGUE AND AMBIGUOUS.
THE COURT:  ALL RIGHT.  SUSTAINED.

Q BY MR. TACHIKI:  WHEN THE SANTA MONICA
AIRPORT ASSOCIATION WAS NEGOTIATING THE 1984 AGREEMENT,
DID IT RETAIN AN ATTORNEY TO REPRESENT THE ORGANIZATION
IN THE NEGOTIATIONS?

A  I BELIEVE WE ALWAYS HAD AN ATTORNEY.  SO I'M
NOT SURE HOW TO ANSWER THAT QUESTION.

Q  WELL, WHO WAS THE ATTORNEY THAT YOU HAD
RETAINED?

A  I DON'T RECALL AT THE TIME.  IT WAS BOB
CLEVES -- I DON'T RECALL WHO AT THAT TIME -- WHO THE
ATTORNEY WAS.

BUT THE ATTORNEY THAT WE WORKED WITH FOR THE
MOST PART WERE THE TWO ATTORNEYS FROM THE FAA AND STAN
GREEN FROM GAMA WHO BEST UNDERSTOOD THE PROBLEMS THAT
WERE FACING US AND DID, INDEED, REPRESENT OUR INTERESTS
BECAUSE THEY WANTED THE SAME THING WE DID, THAT IS, TO
KEEP THE AIRPORT OPEN.

Q  WELL, WAS MR. GREEN SMAA'S ATTORNEY ALSO?

A  NO, HE WAS NOT.  HE WAS AN ATTORNEY WHO WAS A
FULL-TIME EMPLOYEE OF GAMA, THE GENERAL AVIATION
MANUFACTURER'S ASSOCIATION.

Q  AND THE FAA ATTORNEYS WERE ALSO NOT SMAA
ATTORNEYS; IS THAT CORRECT?

A  OF COURSE NOT.

Q  I JUST WANT TO CLARIFY, BECAUSE YOU SAID THEY
WERE REPRESENTING YOUR INTERESTS --

A  WELL, THEY WERE.
Q BUT THEY WEREN'T YOUR ATTORNEYS REPRESENTING SMAA?

A NO, I DIDN'T SAY THAT.

Q DID YOU EVER HAVE ANY CONVERSATIONS WITH EITHER CITY REPRESENTATIVES OR FAA REPRESENTATIVES ABOUT BEING AN ACTUAL SIGNATORY TO THE 1984 AGREEMENT?

A I DON'T RECALL IF THAT EVER CAME UP.

MR. TACHI...: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

MR. KIRSCHBAUM: JUST A COUPLE, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. KIRSCHBAUM:

Q MR. SCHIFF, IF YOU DIRECT YOUR ATTENTION TO EXHIBIT 466. THIS IS THE COMPLAINT THAT I BELIEVE YOU -- LET ME ASK IT IN THE FORM OF A QUESTION. IS THIS THE COMPLAINT THAT YOU REFERENCED EARLIER RELATING TO THE EVICTIONS THAT THE AIRPORT ASSOCIATION BROUGHT IN THE NAMES OF THE INDIVIDUAL OPERATORS?

A YES, IT IS. AND IT ALSO REFRESHES MY MEMORY AS TO WHO OUR ATTORNEY WAS AT THE TIME.

Q AND WHO WAS THAT?

A MR. KNICKERBOCKER.

Q AND YOU KNEW HE WAS ALSO THE FORMER CITY ATTORNEY OF CITY OF SANTA MONICA; CORRECT?

A YES.

MR. KIRSCHBAUM: NOTHING FURTHER.
THE COURT:  ALL RIGHT.  ANYTHING ELSE?

MR. TACHIYI:  CAN I ASK ONE QUESTION, YOUR HONOR.

RECROSS-EXAMINATION

BY MR. TACHIYI:

Q  MR. SCHIFF, THIS PARTICULAR COMPLAINT WAS FILED.  LEAD PLAINTIFF IS RICHARD KETTLER; IS THAT CORRECT?

A  YES.

Q  IN LOOKING AT THIS YOU DETERMINED THAT SANTA MONICA AIRPORT ASSOCIATION IS NOT NAMED AT ALL IN THIS COMPLAINT; IS THAT CORRECT?

A  I DON'T THINK IT IS, BUT IT SPEAKS FOR ITSELF.

Q  NOW, DO YOU SEE ON THE FRONT PAGE -- IT'S A LITTLE DIFFICULT TO READ -- THERE'S A CASE NUMBER THERE. IT SAYS C, AND IT'S A HARD NUMBER, BUT IT LOOKS LIKE 376875?

A  I SEE THAT BATES NUMBER, YES.

Q  IN THE COMPLAINT FILED BY THE SANTA MONICA AIRPORT ASSOCIATION IN THIS CASE, THEY REFER TO A CASE FILED WITH A CASE NUMBER OF WEC 072094.  IS THAT A DIFFERENT CASE?

A  I DON'T KNOW.

Q  IS THAT SUPPOSED TO BE THE SAME CASE THAT WE'RE LOOKING AT RIGHT HERE THAT WAS FILED WITH MR. KETTLER AS THE LEAD PLAINTIFF?

A  I DON'T KNOW IF IT'S A DIFFERENT CASE OR NOT.
I REALLY AM NOT AN ATTORNEY, AND I CAN'T ANSWER THAT
QUESTION. I MEAN, I DON'T KNOW WHAT THE NUMBERING
SYSTEM MEANS.
Q OKAY. SO DO YOU KNOW ABOUT ALL THE LAWSUITS
THAT WERE FILED BY THE SANTA MONICA AIRPORT ASSOCIATION?
A I DID AT ONE TIME OR ANOTHER.
Q OKAY.
THE COURT: ARE THERE MORE LAWSUITS OTHER THAN
WHAT WE'VE DISCUSSED HERE?
MR. TACHIKI: YOUR HONOR, THIS IS NOT, AT LEAST,
THE COMPLAINT THAT'S REFERENCED IN THE SECOND AMENDED
COMPLAINT IN THIS CASE. THIS IS A WHOLLY DIFFERENT
ACTION. PARAGRAPH -- IT'S PARAGRAPH 44 OF THE SECOND
AMENDED COMPLAINT. IT DOES NOT REFERENCE THIS CASE AT
ALL.
MR. KIRSCHBAUM: WE MAY HAVE --
MR. TACHIKI: PARAGRAPH 48, YOUR HONOR. I'M
SORRY, YOUR HONOR, ON LINE 19.
MR. KIRSCHBAUM: WE MAY HAVE REFERENCED THE WRONG
CASE NUMBER IN OUR COMPLAINT HERE, AND THIS DOCUMENT,
EXHIBIT 476, HAS BEEN PROVIDED MANY MOONS AGO.
MR. TACHIKI: YOUR HONOR, I HAVE NO MORE
QUESTIONS.
THE COURT: ANYTHING ELSE?
MR. KIRSCHBAUM: NOTHING FURTHER.
THE COURT: OKAY. THANK YOU, MR. SCHIFF. YOU MAY
STEP DOWN.
DO YOU HAVE ANY OTHER WITNESSES?
MR. KIRSCHBAUM: YES, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

MR. KIRSCHBAUM: MR. BARTON, JAMES BARTON.

JAMES BARTON,

CALLED AS A WITNESS BY THE PLAINTIFFS,

WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE SWORN.

YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: THANK YOU. PLEASE HAVE A SEAT.

SIR, COULD WE HAVE YOU STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

THE WITNESS: MY NAME IS JAMES ANTHONY BARTON, B-A-R-T-O-N.

THE CLERK: THANK YOU.

DIRECT EXAMINATION

BY MR. KIRSCHBAUM:

Q MR. BARTON, ARE YOU A MEMBER OF THE SANTA MONICA AIRPORT ASSOCIATION?

A I AM.

Q DO YOU CURRENTLY HOLD ANY OFFICE?
A I'M PRESENTLY THE PRESIDENT.
Q HAVE YOU BEEN THE PRESIDENT IN THE PAST?
A I HAVE.
Q HOW MANY TIMES OR HOW MANY YEARS?
A I DON'T REALLY REMEMBER HOW MANY TIMES, BUT PROBABLY SIX OR SEVEN TIMES OVER THE LAST 25 YEARS.
Q THAT WAS MY NEXT QUESTION.
A HOW LONG HAVE YOU BEEN A MEMBER OF THE ASSOCIATION?
Q A SINCE 1975 OR SIX, SOMETHING LIKE THAT.
Q YOU'RE A PILOT?
A I'M A PILOT.
Q HOW LONG HAVE YOU BEEN A PILOT?
A SINCE 1964.
THE COURT: IS THAT WHAT YOU DO FOR A LIVING?
THE WITNESS: IT IS NOT.
Q BY MR. KIRSCHBAUM: WHAT DO YOU DO FOR A LIVING?
A I'M IN MARKETING SALES IN THE PRECIOUS METAL PLATING INDUSTRY.
Q DO YOU HAVE AN ESTIMATE AS TO HOW MANY FLIGHT HOURS YOU HAVE?
A AROUND 6,000.
Q AND DO YOU RECALL THE -- YOU'VE BEEN PRESENT IN THE COURTROOM TODAY?
A I HAVE.
Q DO YOU RECALL THE VARIOUS LITIGATIONS THAT WE'VE BEEN DISCUSSING, THE 1977 FEDERAL DISTRICT COURT
CASE? DO YOU RECALL THAT?

A I DO.

Q DO YOU RECALL THE GAMA AND NBAA CASE RELATING TO THE 85 DECIBEL NOISE ORDINANCE?

A I DO.

Q AND DO YOU RECALL THE PETITION FOR WRIT OF MANDATE THAT WE WERE JUST TALKING ABOUT WITH MR. SCHIFF FROM JULY 31ST OF 1981 RELATING TO THE EVICTIONS?

A I DO.

Q DO YOU RECALL THE PART 13 CASE FILED AGAINST THE CITY OF SANTA MONICA IN JANUARY OF 1982?

A I DO.

Q DO YOU RECALL A SUBSEQUENT PART 13 CASE FILED BY THE SANTA MONICA AIRPORT ASSOCIATION IN CONJUNCTION WITH BRILES HELICOPTER?

A I DO.

Q AND DO YOU ALSO RECALL A PART 13 COMPLAINT FILED BY MR. GARY DANFORTH?

A I DO.

Q OKAY. DID YOU HAVE ANY INVOLVEMENT WITH THE SANTA MONICA AIRPORT ASSOCIATION IN FORMULATING THE, FOR LACK OF A BETTER WORD, STRATEGY TO BE USED IN THE PARTICIPATION IN THE WORKING GROUP IN APPROXIMATELY 1983?

A I DO.

Q COULD YOU DESCRIBE FOR THE COURT WHAT IT IS THAT YOU DID TO HELP PARTICIPATE IN THAT PROCESS?

A WELL, I VOLUNTEERED TO PARTICIPATE IN THE
1 WORKING GROUP AND HELP WITH ALL THE PEOPLE INVOLVED IN
2 THE WORKING GROUP IN WORKING OUT ACCEPTABLE
3 UNDERSTANDINGS AS TO HOW THE AIRPORT WAS GOING TO WORK
4 AND WHAT THE CITY COULD AND COULDN'T DO RELATED TO THE
5 '84 AGREEMENT.
6 Q DID YOU EVER HAVE ANY CONTACT IN THAT TIME
7 FRAME WITH THE FAA?
8 A I DID.
9 Q WHO DID YOU TALK TO AT THE FAA?
10 A WELL, WE WERE ORIGINALLY VISITED BY SANDY
11 MURDOCH AND LYNN CIRRUIZI FROM WASHINGTON.
12 I WAS IN CONTACT WITH MR. HERMAN BLISS IN THE
13 WESTERN REGION. AND THERE WERE MANY, MANY MEETINGS
14 EARLY ON RELATING TO OUR CONCERNS OF THE CITY'S DESIRE
15 TO CLOSE THE AIRPORT, RESTRICTED 85 DB, AND OTHER
16 ASSORTED ATTEMPTS ON THEIR PART TO DOWNGRADE THE AIRPORT
17 SO IT WASN'T A FUNCTIONAL AIRPORT.
18 Q DID YOU PARTICIPATE PERSONALLY IN THESE
19 MEETINGS?
20 A I DID.
21 Q DID YOU ALSO ATTEND ANY MEETINGS WITH THE
22 CITY OF SANTA MONICA DURING THAT TIME FRAME OR
23 REPRESENTATIVES FROM THE CITY OF SANTA MONICA?
24 A YES, I DID.
25 Q COULD YOU DESCRIBE SOME OF THOSE MEETINGS?
26 A WITH JOHN ALSCHULER, WHO WAS THE CITY MANAGER
27 AT THE TIME, AND JOHN JALILI, WHO WAS THE ASSISTANT CITY
28 MANAGER AT THE TIME, AND BOB MEYERS, WHO WAS THE CITY
ATTORNEY RELATED TO NEGOTIATING ISSUES THAT WOULD COME OUT TO BE THE FINAL '84 AGREEMENT. AND PRIOR TO THAT, IN THE '70s, LATE '70s, ALSO FROM TIME TO TIME, WOULD MEET WITH CITY OFFICIALS ABOUT MAJOR CONCERNS.

Q RELATING TO THE AIRPORT?
A RELATING TO THE AIRPORT.
A THE SUBSTANCE OF THE MEETINGS WERE TAKING SPECIFIC ISSUES THAT WAS BEING FORMULATED TO BE THE '84 AGREEMENT IN DEALING WITH THE AS TO WHETHER THAT WOULD BE ACCEPTABLE TO THE SANTA MONICA AIRPORT ASSOCIATION AND USERS AND MAKING ADJUSTMENTS TO THE ROUGH DRAFT OF WHAT I'LL CALL THE AGREEMENT THAT WAS GOING TO BE DRAWN AS DEALING WITH THOSE ISSUES OF WHICH WE HAD CONCERNS.

Q AND DID YOU PERSONALLY VOICE CONCERNS WITH RESPECT TO CERTAIN ASPECTS OF THE PROPOSED AGREEMENT?
A VERY MUCH SO.
Q DO YOU RECALL ANY OF THE SPECIFICS THAT CONCERNED YOU?
A WELL, IT'S 25 YEARS AGO. BUT THE GUARANTEED MINIMUM FLEET OF THE AIRPORT IN TERMS OF TIE DOWN SPACES WAS ONE ISSUE.

THE NUMBER OF FIXED BASE OPERATORS AND WHAT THE DEFINITION, WHAT DEFINITION OF A FULL SERVICE FIXED
BASE OPERATOR WAS, WHERE THEY WERE GOING TO -- THEORETICALLY GOING TO BE MOVED TO, HOW THAT WAS GOING TO BE HANDLED. THE NOISE PROGRAM AND HOW IT WAS GOING TO BE HANDLED WERE SOME OF THE KEY CONCERNS RELATING TO THE CRAFTING OF THE '84 AGREEMENT.

AND YOU EXPRESSED THOSE CONCERNS BOTH TO THE FAA AND TO THE CITY?

YES.

IN RESPONSE TO YOUR EXPRESSION OF CONCERN IN SOME OF THOSE AREAS, WERE CHANGES MADE TO THE PROPOSED AGREEMENT?

YES.

AT SOME POINT IN TIME, WERE YOU A PART OF THE GROUP ON BEHALF OF THE SANTA MONICA AIRPORT ASSOCIATION THAT APPROVED OF THE FINAL DRAFT OF THE '84 AGREEMENT?

IN ROUGH FORM, YES.

WHAT DO YOU MEAN BY ROUGH FORM?

WHEN THE '84 AGREEMENT WAS FINALLY WRITTEN WITH ALL THE LAWYERS PUTTING THEIR FINE DOTS ON IT, TO ME, THE FINAL DOCUMENT WAS A BIT VAGUE, IN SOME INSTANCES.

HOW SO?

WELL, WE WOULD EXPRESS OUR MAJOR CONCERNS, BUT WHEN WE WOULD READ THE DOCUMENT, WE HAD WISHED THAT IT TURNED OUT TO BE A LITTLE MORE EXPLICIT.

IN WHAT AREAS?

PARDON?

IN WHAT AREAS DID YOU WANT IT MORE
EXPLICIT?

THE WITNESS: THE DEFINITION, FOR INSTANCE, OF A FULL SERVICE FIXED BASE OPERATOR WAS NOT SPECIFIED IN DETAIL. EVERYBODY KNEW IN THOSE DAYS WHAT A FULL SERVICE FIXED BASE OPERATOR WAS, BUT THERE WAS NO ITEM-BY-ITEM TYPES OF SERVICES THAT WOULD DEFINE WHAT A FULL SERVICE FIXED BASE OPERATOR WAS.

IT GETS MURKY AS TO WHAT A SPECIALTY OPERATOR MIGHT BE VERSUS A FULL SERVICE FIXED BASE OPERATOR.

IT'S KIND OF LIKE, FOR INSTANCE, TRYING TO DESCRIBE --

THE COURT: HOLD ON A MINUTE.

THE WITNESS: SORRY.

THE COURT: I'M JUST ASKING WHAT AREAS, NOT PROBLEMS. OTHER THAN FBO, WHAT ELSE THAT YOU THOUGHT WAS VAGUE?

THE WITNESS: WELL, THAT'S THE ONE THAT COMES TO MIND NOW. THERE WERE A FEW OTHERS, BUT THAT'S THE ONE THAT COMES TO MIND.

THE COURT: THAT'S FINE.

Q BY MR. KIRSCHBAUM: LET ME DIRECT YOUR ATTENTION TO EXHIBIT 484. THAT'S IN VOLUME NO. 9.

THE COURT: YOU BETTER HELP HIM OUT.

MR. KIRSCHBAUM: I'LL GET IT.

THE WITNESS: NOW WHAT DO I LOOK AT, LLOYD?

Q BY MR. KIRSCHBAUM: THIS IS A LETTER DATED MAY 7TH, 1982 ON SANTA MONICA AIRPORT ASSOCIATION LETTERHEAD.

IS THAT YOUR SIGNATURE AT THE BOTTOM OF THE
FIRST PAGE?
A IT IS.
Q IT INDICATES AT THAT POINT IN TIME YOU WERE THE VICE PRESIDENT OF THE ASSOCIATION?
A THAT'S CORRECT.
Q IS THAT ANOTHER ONE OF THE OFFICES THAT YOU HELD?
A YES.
Q AND THIS LETTER DIRECTED TO THE ASSISTANT GENERAL COUNSEL FOR LITIGATION DEPARTMENT OF TRANSPORTATION PROVIDED ADDITIONAL DOCUMENTATION AND INFORMATION TO THE DEPARTMENT OF TRANSPORTATION IN THE FAA; CORRECT?
A YES.
Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 476 WHICH IS IN THIS SAME BINDER.
A YES.
Q OKAY. THIS IS THE LETTER FROM THE FAA REQUESTING ADDITIONAL INFORMATION ABOUT THREE MONTHS EARLIER THAN YOUR LETTER OF EXHIBIT 484; CORRECT?
A YES, IT IS.
Q OKAY. YOUR LETTER THAT'S DATED MAY 7TH, EXHIBIT 484, WAS THAT IN RESPONSE TO THE LETTER DATED FEBRUARY THE 4TH?
A LET ME READ THIS. I BELIEVE IT IS.
Q WAS THERE EVER ANY TIME THAT YOU KNOW ABOUT WHERE THE FAA REQUESTED ANY ADDITIONAL INFORMATION FROM THE AIRPORT ASSOCIATION THAT YOU DIDN'T PROVIDE THEM?
I can't think of any time when we didn't provide the information that the FAA requested, although we went to great lengths from time to time in order to be able to acquire that information to get it to them.

Q. And when you were part of the working group in the planning process that led to the '84 agreement, did you have an understanding as to whether or not the agreement that would ultimately be reached would resolve the airport association's complaint?

A. No, I didn't. And my whole concern was that until the agreement was worked out to our satisfaction, we weren't about to reverse our position, that we intended to carry on with any pending complaints or litigation that's necessary. The '84 agreement would resolve those issues if it could be resolved to our satisfaction.

Q. Okay. And let me ask you about something that happened much more recently. Do you recall that in approximately November of 1997 the airport association submitted an administrative complaint to the FAA relating to the issues that we're here about in the case in front of this court?

A. Yes, I do.

Q. And you understand, do you not, that the statute was changed, changing it from Part 13 to Part 16 of the code of federal regulations?

A. That is correct.
Q SO YOU UNDERSTAND THAT THE AIRPORT
ASSOCIATION FILED A PART 16 COMPLAINT; CORRECT?
A THAT'S CORRECT.
Q OKAY. AND DO YOU ALSO HAVE AN UNDERSTANDING
AS TO THE FAA'S DISMISSING THE PART 16 COMPLAINT WITHOUT
PREJUDICE?
A YES.
Q AND FOLLOWING THAT PART 16 COMPLAINT AND ITS
DISMISSAL WITHOUT PREJUDICE, WERE YOU A PART OF A GROUP
OF SANTA MONICA AIRPORT ASSOCIATION MEMBERS THAT WENT
AND MET WITH MEMBERS OF THE FAA AT THE WESTERN REGIONAL
HEADQUARTERS?
A I WAS.
Q I'LL DIRECT YOUR ATTENTION TO EXHIBIT 637.
THE COURT: I'LL TELL YOU WHAT. I WOULD LIKE TO
TAKE A BREAK RIGHT NOW.
WE'LL HAVE A 15-MINUTE RECESS.
MR. KIRSCHBAUM: THAT WOULD BE GREAT. THANK YOU.
(AFTERNOON RECESS WAS TAKEN.)

THE COURT: ALL RIGHT. WHY DON'T WE CONTINUE.
Q BY MR. KIRSCHBAUM: WHEN WE LEFT OFF, WE WERE
GETTING READY TO TAKE A LOOK AT EXHIBIT 637. THAT IS IN
VOLUME NO. 12.
DO YOU RECALL, MR. BARTON, THAT IN
APPROXIMATELY APRIL OF 1998 THE AIRPORT ASSOCIATION
CONTACTED THE FEDERAL AVIATION ADMINISTRATION AND SET UP
1 A MEETING IN WESTERN REGIONAL HEADQUARTERS?
2 A I DO.
3 Q AND WERE YOU A PART OF THAT MEETING?
4 A I WAS.
5 Q WHO ELSE WAS AT THAT MEETING?
6 A MR. DON BRANDSEN; MR. RANDY STEIN; AND
7 YOURSELF, LLOYD KIRCHBAUM.
8 Q WHO WAS THERE ON BEHALF OF THE FAA?
9 A THERE WAS THE FAA ADMINISTRATOR OF THE
10 WESTERN REGION, WITHYCOMBE; HERMAN BLISS, WHICH HE USED
11 TO BE HEAD OF ALL OF THE AIRPORTS IN THE WESTERN REIGN;
12 DEWITTE LAWSON, GENERAL COUNSEL, I BELIEVE, OF THE
13 WESTERN REGION; AND A MONROE BENTON, WHO SEEMED TO BE
14 ALSO IN THE LEGAL DEPARTMENT OF THE WESTERN REGION.
15 Q AND DO YOU RECALL THE TOPICS OF DISCUSSION AT
16 THAT MEETING?
17 A THE TOPIC OF DISCUSSION OF THAT MEETING WAS
18 WE WERE VERY CONCERNED THAT THE '84 AGREEMENT WAS BEING
19 VIOLATED, AND WE WANTED THE FAA TO TAKE ACTION TO
20 ENFORCE THE '84 AGREEMENT.
21 Q TAKING A LOOK AT EXHIBIT 637, IS THIS A
22 LETTER THAT WAS PRESENTED TO US AT THAT MEETING BY HAND?
23 A BY WHO?
24 Q BY HAND DELIVERY?
25 A OH, BY HAND DELIVERY. YES, IT WAS.
26 Q OKAY. AND DIRECTING YOUR ATTENTION TO THE
27 SECOND PARAGRAPH, AFTER ADVISING THE FAA THAT THE
28 AIRPORT ASSOCIATION WAS CONCERNED REGARDING THE TERMS OF
THE '84 AGREEMENT, DID THE FAA PROPOSE SOME TYPE OF RESOLUTION?

THE FAA TOLD US THAT IF WE WANTED TO ENFORCE THE '84 AGREEMENT --

MR. TACHIKA: YOUR HONOR, I OBJECT. THIS CALLS FOR HEARSAY NOW.

THE COURT: SUSTAINED.

Q BY MR. KIRSCHBAUM: DID THE FAA MAKE ANY OFFERS WITH RESPECT TO A POTENTIAL RESOLUTION?

A YES. THEY SUGGESTED TO US --

MR. TACHIKA: SAME OBJECTION, YOUR HONOR. IT'S HEARSAY.

THE COURT: SUSTAINED.

Q BY MR. KIRSCHBAUM: LET ME DIRECT YOUR ATTENTION TO THE SECOND PARAGRAPH, THE FIRST SENTENCE WHICH INDICATES:

"THE FAA, THROUGH ITS WESTERN PACIFIC REGION HEREBY OFFERS TO ASSIST IN THE SETTLEMENT/RESOLUTION OF THE CITY/ASSOCIATION DISPUTE THROUGH AN ALTERNATE DISPUTES RESOLUTION PROCESS."

DO YOU SEE THAT?

A YES.

Q AND, IN FACT, DID THE FAA FACILITATE AN ALTERNATIVE DISPUTE RESOLUTION PROCESS BETWEEN THE CITY AND THE AIRPORT ASSOCIATION?

A THEY DID.

Q AND FURTHER DOWN IN THAT PARAGRAPH, IT
INDICATES:

"THE PROCESS WE SUGGEST IS MEDIATION IN WHICH THE FAA WOULD ATTEMPT TO FACILITATE SETTLEMENT. FAA WILL BE A NEUTRAL PARTICIPANT AND WILL LACK BOTH THE AUTHORITY AND INCLINATION TO IMPOSE A RESOLUTION."

DO YOU SEE THAT?

A YES.

Q IS THAT IN FACT WHAT THE FAA DID?

A YES.

Q AND YOU PARTICIPATED IN THE MEDIATION PROCESS?

A I DID.

Q AND THE MEDIATOR WAS FROM THE FAA?

A HE WAS IN WASHINGTON.

Q AND DID THE FAA ATTEMPT TO IMPOSE A RESOLUTION OF THE DISPUTE?

MR. TACHIKI: OBJECTION. YOUR HONOR, THAT'S VAGUE.

THE COURT: SUSTAINED. TRY AGAIN.

Q BY MR. KIRSCHBAUM: DURING THE MEDIATION PROCESS -- THE MEDIATION PROCESS ITSELF WAS CONFIDENTIAL; CORRECT?

A YES.

Q OKAY. YOU UNDERSTOOD THAT YOU WEREN'T SUPPOSED TO DISCLOSE THE DISCUSSIONS IN ANY FORUM INCLUDING IN A COURT OF LAW LIKE WE'RE IN TODAY; CORRECT?
A: THAT'S CORRECT.

Q: NOTWITHSTANDING THE CONFIDENTIALITY, I'M NOT ASKING YOU TO BREACH THE CONFIDENCE YOU AGREED TO MAINTAIN.

AT ANY POINT IN TIME DURING THAT PROCESS, DID THE FAA ATTEMPT TO FORCE THE PARTIES TO ACCEPT A PARTICULAR RESOLUTION OF A PARTICULAR ISSUE?

MR. TACHIKI: OBJECTION. THAT'S NOT ONLY VAGUE, BUT IT VIOLATES THE VERY CONFIDENCE, THE CONFIDENTIAL AGREEMENT THAT MR. KIRSCHBAUM JUST MENTIONED, BECAUSE YOU'RE TRYING TO GET TO THE ACTUAL SUBSTANCE OF THE CONVERSATION.

THE COURT: HOLD ON A SECOND. SUSTAINED. WHAT RELEVANCY WOULD THAT HAVE ON THE ISSUES WE'RE DISCUSSING?

MR. KIRSCHBAUM: WELL, I'M TRYING TO SHOW, YOUR HONOR, THAT THE FAA VIEWED ITSELF AS A NEUTRAL, NOT AS A PARTY TO THE DISPUTE AND THAT IT DID, IN FACT, VIEW THE AIRPORT ASSOCIATION AS A PARTY TO THE DISPUTE AND THAT THE AIRPORT ASSOCIATION WAS THE PROPER PARTY TO BE CARRYING FORTH THE DISPUTE.

THE COURT: I'M GOING TO SUSTAIN THE OBJECTION TO THE QUESTION.

MR. KIRSCHBAUM: OKAY.

Q: AT ANY POINT IN TIME DURING THAT PROCESS, WERE YOU EVER ADVISED BY THE FAA THAT THE AIRPORT ASSOCIATION LACKED THE AUTHORITY TO ENFORCE THE '84 AGREEMENT?
MR. TACHIKI: OBJECTION. THAT'S HEARSAY. IT VIOLATES --

THE COURT: SUSTAINED.

Q BY MR. KIRSCHBAUM: DURING THE COURSE OF THE WORKING GROUP DISCUSSIONS AND NEGOTIATIONS THAT LED UP TO THE '84 AGREEMENT, DID YOU HAVE OCCASION TO SPEAK DIRECTLY WITH THE FAA?

A I DID.

Q AND TO WHOM DID YOU SPEAK?

A MOSTLY TO LYNN CIRRUZI.

Q AND HOW OFTEN DID YOU SPEAK TO LYNN CIRRUZI?

A HE OFTEN CALLED ME AT WORK AND ASKED ME WHAT'S GOING ON IN SANTA MONICA; WHAT THE NEWSPAPERS HAVE THAT MIGHT BE OF INTEREST TO HIM; WHAT SORT OF SHenanigans ARE BEING PLAYED, AND THAT WENT ON THROUGH A COUPLE OF YEARS, MAYBE NOT QUITE THAT LONG, WHERE HE WOULD CHECK WITH ME TO JUST SEE WHAT'S GOING ON RELATED TO THE AIRPORT ISSUE AND THE DISPUTE.

Q AND DID YOU PROVIDE INFORMATION TO MR. CIRRUZI ABOUT THE STATUS AND WHAT WAS GOING ON?

A I DID. THAT WAS ABOVE AND BEYOND HIM COMING OUT HERE AND HAVING PRIVATE MEETINGS WITH US PRIOR TO MEETING WITH THE CITY AND WHATEVER OTHER AGENDAS THEY MAY HAVE HAD.

MR. KIRSCHBAUM: NOTHING FURTHER.

THE WITNESS: I --

THE COURT: HOLD ON.

MR. TACHIKI.
CROSS-EXAMINATION

BY MR. TACHIKI:

Q YOU STILL HAVE NOTEBOOK NO. 9, VOLUME NO. 9 OUT IN FRONT OF YOU. WOULD YOU TURN TO EXHIBIT 476.

IT'S THE LETTER TO PAUL BLACKMAN. IT'S DATED FEBRUARY 4TH, 1982.

A 476?

Q YES.

A I HAVE THAT LETTER.

Q OKAY. NOW, THIS LETTER, IT'S ADDRESSED TO MR. BLACKMAN, AND IT ASKS THE SANTA MONICA AIRPORT ASSOCIATION TO PROVIDE ADDITIONAL INFORMATION; IS THAT CORRECT?

ARE YOU LOOKING AT THE SECOND PARAGRAPH, MR. BARTON?

A YES, I AM. YES, IT DID.

Q DO YOU SEE AT THE BOTTOM OF THAT LETTER WHO SIGNED THE LETTER FOR THE FAA?

A IT SAYS JOHN H. CASSADY.

Q AND IT SAYS DEPUTY ASSISTANT CHIEF COUNSEL, IN THE REGULATIONS AND ENFORCEMENT DIVISION; IS THAT CORRECT?

A THAT'S WHAT IT SAYS.

Q AND YOU TESTIFIED EARLIER THAT YOU GAVE THIS ADDITIONAL INFORMATION TO THE FAA SUBSEQUENT TO THIS LETTER; IS THAT TRUE?

A I PERSONALLY?

Q YES, YOU PERSONALLY.
A I PERSONALLY SIGNED THE LETTER. I BELIEVE
I -- AND WE MAILED OUT WHATEVER IT WAS THAT THEY WERE
ASKING FOR.
Q WHY DON'T YOU TAKE A LOOK AT YOUR LETTER
WHICH IS EXHIBIT 484. IT'S DATED MAY 7TH, 1982.
A OKAY.
Q NOW, THAT LETTER IS -- IS Addressed TO
SOMEBODY ELSE, ISN'T IT? IT'S Addressed TO ASSISTANT
GENERAL COUNSEL FOR LITIGATION?
A THAT'S CORRECT.
Q TO MR. STEINER. SO YOU DIDN'T SEND IT TO
MR. CASSADY, DID YOU?
A APPARENTLY NOT.
Q BUT YOU'RE POSITIVE THAT, IN FACT, THIS
INFORMATION WAS SUPPOSED TO BE RESPONSIVE TO THE LETTER
OF FEBRUARY 4TH, 1982?
A BEING THAT THIS IS 21 YEARS AGO, I CANNOT SAY
I'M POSITIVE OF THAT.
Q AND SUBSEQUENT TO THIS LETTER, DID YOU SEE
ANOTHER PART 13 COMPLAINT FILED BY THE SANTA MONICA
AIRPORT ASSOCIATION WITH THE INFORMATION REQUESTED BY
THE FAA?
A SUBSEQUENT TO MAY 7TH, 1982.
Q AFTER THIS LETTER OF FEBRUARY 4TH, 1982 THAT
ASKED FOR THE ADDITIONAL INFORMATION, DID YOU SEE
ANOTHER PART 13 COMPLAINT FILED ON BEHALF OF SANTA
MONICA AIRPORT ASSOCIATION?
A I JUST DON'T REMEMBER.
Q YOU JUST GOT THROUGH SAYING THAT YOU HAD BEEN SPEAKING TO MR. CIRRUZI FOR A NUMBER OF YEARS. YOU SAID HE SPOKE TO YOU ON A REGULAR BASIS?
A THAT'S CORRECT.
Q YOU SAID IT HAPPENED OVER A COUPLE OF YEARS?
A YES.
Q WHAT YEARS WERE THOSE IN?
A I DON'T REMEMBER, BUT IT WAS IN THE 1980 TO 1984 ERA.
Q SO IT WAS FOR FOUR YEARS THAT YOU SPOKE TO HIM?
A NO. MAYBE A YEAR AND A -- YEAR-AND-A-HALF OF TIME, AND IT WAS JUST WHEN THEY STARTED TO RESPOND TO THE CITY'S DESIRE TO CLOSE THE AIRPORT, AND OUR COMPLAINT RELATED TO THAT SUBJECT MATTER.
Q WELL, WAS IT IN 1982?
A I DON'T REMEMBER.
Q WAS IT IN 1983?
A I DON'T REMEMBER.
Q WOULD IT HAVE HAPPENED AROUND THE TIME OF THE AIRPORT WORKING GROUP?
A I BELIEVE WELL BEFORE THAT.
Q WELL BEFORE THAT? OKAY.
SO CERTAINLY NOT BETWEEN NOVEMBER OF 1983 AND JANUARY OF 1984 THEN?
A I DON'T REMEMBER, BUT IT WAS PRIOR TO THE CITY AND THE FAA STARTING TO PUT TOGETHER AN '84 AGREEMENT.
Q OKAY. THANK YOU.
A IT WAS DURING THE TIME THEY WERE VISITING THE CITY --
Q OKAY.
A -- AND THREATENING IT.
Q IT WAS PRIOR TO THE ACTUAL DRAFT --
A IT WAS DURING THE TIME.
Q WE CAN'T TALK AT THE SAME TIME.
BUT IT WAS PRIOR TO THE ACTUAL TIME THE 1984 AGREEMENT WAS DRAFTED; IS THAT CORRECT?
A TO THE BEST OF MY RECOLLECTION.
Q NOW, WHEN YOU WERE ASKED ABOUT THE MEETING THAT YOU HAD WITH THE FAA ON -- IN APRIL OF 1998, WERE YOU LOOKING AT A PIECE OF PAPER? WAS THAT A DOCUMENT FROM THAT MEETING?
A I SAW A SUGGESTION OF AN ADR RESOLUTION.
Q YOU WERE LOOKING AT A LITTLE PIECE OF PAPER.
IS THAT NOTES YOU HAVE?
A JUST SOME NOTES. I WROTE DOWN SOME NAMES BECAUSE THE NAMES ARE SOMETIMES VAGUE FOR MEETINGS THAT I HAD FOUR OR FIVE YEARS AGO.
Q YOU DIDN'T REMEMBER THE NAMES SO YOU JUST WROTE THEM DOWN?
A I KNEW SOME OF THEM, NOT ALL OF THEM.
SPECIFICALLY I DIDN'T REMEMBER MR. MONROE BENTON.
Q I THINK IT'S BALTON.
A BALTON IS THE NAME. I KNEW HE WAS THERE.
BUT IT'S DEWITTE LAWSON THAT SAID IF WE WANTED TO FIGHT
THIS ISSUE, WE HAD STANDING TO SUE YOU.

Q THAT'S FINE. YOU ANSWERED THE QUESTION.

NOW, MR. BARTON, YOU SAID THAT YOU WERE A MEMBER OF THE AIRPORT WORKING GROUP?

A FROM TIME TO TIME.

Q CAN I SHOW YOU TWO EXHIBITS THAT ARE DEFENDANTS EXHIBIT 2149 AND 2150. CAN YOU TAKE A LOOK AT 2149 WITH THAT WORKING GROUP ROSTER DATED APRIL 6, 1983, AND YOU CAN LOOK AT 2150 WHICH IS THE WORKING GROUP ROSTER WHICH IS DATED MAY 4TH, 1983. IF YOU CAN JUST LOOK AT THE NAMES ON THE FIRST TWO PAGES.

A YES.

Q ARE YOU LISTED IN -- ON THAT GROUP?

A NOT EITHER ONE OF THESE SHEETS.

Q SO WERE YOU JUST AN INFORMAL MEMBER OF THE AIRPORT WORKING GROUP?

A WITH THESE GROUPS, I GUESS I WAS.

Q SO WERE YOU NOT ONE OF THE NAMED MEMBERS?

A NOT AT THAT TIME. I HAD BEEN -- I HAVE BEEN ON NUMEROUS AIRPORT WORKING GROUPS IN THE PAST WORKING WITH THE NEIGHBORS AND THE CITY TRYING TO RESOLVE ISSUES.

Q BUT I'M JUST TALKING ABOUT THIS SPECIFIC WORKING GROUP THAT DEALT WITH THE ISSUES THAT DEVELOPED INTO THE MASTER PLAN. YOU WEREN'T A FORMAL MEMBER OF THIS GROUP?

A MY NAME IS NOT ON HERE.

Q NOW, YOU INDICATED THAT YOU WERE ONE OF THE
NEGOTIATORS FOR THE SANTA MONICA AIRPORT ASSOCIATION REGARDING THE 1984 AGREEMENT; IS THAT CORRECT?

A. I WAS ONE OF THE PERSONS INVOLVED IN WORKING OUT THE DETAILS OF THE '84 AGREEMENT WHERE WE FELT IT WAS NOT SATISFACTORY TO OUR -- TO THE USERS' NEEDS.

Q. OKAY. BUT WERE YOU ONE OF THE NEGOTIATORS OR DID YOU JUST PROVIDE INFORMATION TO OTHER PEOPLE?

A. WHAT DO YOU MEAN BY NEGOTIATOR?

Q. WELL, DID YOU ACTUALLY MEET WITH OTHER PARTIES AND NEGOTIATE THE TERMS OF THE 1984 AGREEMENT?

A. I DID WITH THE CITY.

Q. OKAY. AND SO WERE YOU ONE OF THE NEGOTIATORS FOR THE SANTA MONICA AIRPORT ASSOCIATION?

A. YES, I WAS.

Q. SO WHEN YOU WERE IN THESE NEGOTIATING SESSIONS, WHO WAS REPRESENTING THE CITY?

A. JOHN ALSCHULER, SHANE -- NO, JOHN JALILI WERE TWO OF THE PEOPLE THAT I REMEMBER SITTING ON THOSE MEETINGS REPRESENTING THE CITY.

Q. WAS THIS DURING THE AIRPORT WORKING GROUP PROCESS?

A. PARDON? NO, THESE WERE NOT WORKING GROUP. THIS HAD TO DO WITH MEETINGS WITH THE CITY OVER ISSUES OF THE '84 AGREEMENT. BETWEEN THE AIRPORT ASSOCIATION AND THE CITY.

Q. WAS THIS PRIOR TO NOVEMBER OF 1983?

A. I DO NOT REMEMBER.

Q. DID YOU EVER NEGOTIATE DIRECTLY WITH THE FAA?
A. ON WHAT ISSUES?
Q. DID YOU EVER NEGOTIATE DIRECTLY WITH THE FAA ON THE ISSUES THAT ARE RAISED IN THE 1984 AGREEMENT?
A. NEGOTIATE MIGHT NOT BE THE RIGHT WORD. WE HAD MEETINGS WITH THE FAA.
Q. WERE YOU EVER AT A ROOM WHERE NEGOTIATIONS WERE OCCURRING WITH THE FAA AND THE CITY AT THE SAME TIME?
A. NO, I WAS NOT.
Q. AND WERE YOU EVER IN A MEETING WITH MR. STARK AND MR. CIRRUZI WHEN THE TERMS OF THE 1984 AGREEMENT WERE BEING NEGOTIATED?
A. I WAS NOT.
Q. DID SMAA HAVE ATTORNEYS REPRESENTING THEM AT THAT TIME DURING THE NEGOTIATIONS FOR THE 1984 AGREEMENT?
A. I'M NOT SURE ABOUT THAT TIME FRAME, BUT I BELIEVE MR. GREEN WAS INVOLVED AT THAT TIME.
Q. AND MR. GREEN WAS THE ATTORNEY FOR --
A. GAMA.
Q. GAMA?
A. GAMA.
Q. BUT HE WASN'T THE ATTORNEY REPRESENTING THE SANTA MONICA AIRPORT ASSOCIATION?
A. THAT'S CORRECT. HE WAS NOT A EMPLOYEE OF THE SANTA MONICA AIRPORT ASSOCIATION.
Q. DID SMAA ITSELF HAVE ITS OWN ATTORNEY REPRESENTING THEM IN THE NEGOTIATIONS?
A  I'M NOT QUITE SURE WHEN MR. KNICKERBOCKER --
WHERE MR. KNICKERBOCKER WAS AND WAS NOT INVOLVED IN
THOSE DATES. IT GOES BACK TOO FAR.
MR. TACHIHI: YOUR HONOR, I HAVE NO MORE
QUESTIONS.
MR. KIRSCHBAUM: I HAVE A COUPLE.

REDIRECT EXAMINATION

BY MR. KIRSCHBAUM:

Q  WHEN YOU WERE INVOLVED IN MEETINGS WITH THE
FAA, DO YOU REMEMBER THE SUBSTANCE OF ANY OF THE ISSUES
THAT WERE DISCUSSED WITH RESPECT TO THE '84 AGREEMENT?
A  TO THE '84 AGREEMENT?
Q  YES, SIR.
A  THE SUBSTANCE WAS BASICALLY ALL THE CONCERNS
WE HAD AT THE TIME WITH CLOSING THE AIRPORT -- THE NOISE
PROGRAM; THE NORTH SIDE DEVELOPMENT AND WHAT THAT WAS
GOING TO CONSIST OF IN TERMS OF THE FIXED BASE OPERATORS
AND HOW THE SERVICES WERE GOING TO BE PROVIDED; HOW THE
NOISE LIMIT WAS GOING TO BE OPERATED, WHAT A GOOD
DEFINITION WOULD BE FOR MITIGATING CIRCUMSTANCES RELATED
TO THE NOISE PROGRAM;

THE FLEET MIX AND THE NUMBER OF TIE DOWN
SPACES AND WHAT WAS GOING TO BE LEFT WOULD BE RESIDUAL
LAND, AND OF THAT, WHAT WOULD BE THE APPROPRIATE USES
FOR RESIDUAL LAND; AND SEVERAL OTHER ITEMS THAT JUST
DON'T COME TO MIND. THERE WERE MAJOR CONCERNS OF THE
USERS OF THE AIRPORT INCLUDING USER FEES.
Q WHAT KIND OF FEES?
A TIE DOWN FEES.
Q AND THOSE ARE ALL SPECIFIC TOPICS THAT YOU PROVIDED INPUT TO THE FAA WITH RESPECT TO WHAT THE AIRPORT ASSOCIATION WAS EXPECTING TO COME OUT OF THE '84 AGREEMENT; CORRECT?
A THOSE, YES.
Q AND YOU DID THAT PERSONALLY?
A I DID THAT PERSONALLY. I DID IT PERSONALLY WITH WASHINGTON AND WITH WESTERN REGIONAL.
MR. KIRSCHBAUM: NOTHING FURTHER.
MR. TACHIKI: JUST A COUPLE OF QUESTIONS.

RECross-Examination
BY MR. TACHIKI:
Q THE INFORMATION YOU GAVE TO THE FAA, DID YOU DO THAT DURING THE PERIOD OF TIME YOU WERE TALKING TO MR. CIRRUZI?
A I STARTED TALKING TO MR. CIRRUZI BEFORE THERE WAS ANYTHING CALLED THE '84 AGREEMENT.
Q THAT'S WHAT I'M ASKING YOU. THE INFORMATION THAT YOU GAVE TO THE FAA YOU GAVE TO MR. CIRRUZI DURING THIS TIME PERIOD THAT WE HAD TALKED ABOUT EARLIER?
A I GAVE HIM INFORMATION ALL ALONG. I GAVE HIM INFORMATION EARLY ON UNTIL -- ANY TIME I WAS TALKING TO MR. CIRRUZI OR MR. MURDOCH, I GAVE THEM INFORMATION.
Q OKAY. MAYBE MY QUESTION IS NOT CLEAR TO YOU. YOU TALKED ABOUT A TIME PERIOD THAT YOU GAVE
INFORMATION TO MR. CIRRUZI, AND YOU SAID IT PREDATED THE
AIRPORT WORKING GROUP PERIOD OR AT LEAST THE '84
AGREEMENT, THE DRAFTING OF THE '84 AGREEMENT; IS THAT
CORRECT?
A IT PREDATED THE DRAFTING OF THE '84
AGREEMENT.
Q WHEN YOU WERE GIVING THIS INFORMATION TO
MR. CIRRUZI, THIS WAS PRIOR TO THE DRAFTING OF THE '84
AGREEMENT; IS THAT CORRECT?
A THAT'S CORRECT. AFTER THAT I WAS TALKING
WITH MR. BLISS.
Q SO THE TIME PERIOD YOU'RE TALKING ABOUT IS,
AT LEAST, DURING THE AIRPORT WORKING GROUP MEETINGS OR
EVEN EARLIER THAN THAT; IS THAT CORRECT?
A THAT COULD BE CORRECT.
MR. TACHIWI: I DON'T HAVE ANY FURTHER QUESTIONS.

FURTHER REDIRECT EXAMINATION
BY MR. KIRSCHBAUM:
Q AND THIS INFORMATION THAT YOU WERE PROVIDING
TO THE FAA, WHEN YOU WERE PROVIDING THIS INFORMATION,
DID YOU KNOW THAT IT WOULD ULTIMATELY END UP IN AN
AGREEMENT?
A DID NOT.
Q DID THE FAA TELL YOU, "WELL, WE'VE GOT AN
AGREEMENT ALL DONE, AND YOU JUST NEED INFORMATION"?
MR. TACHIWI: OBJECTION. HEARSAY.
The Court: SUSTAINED.
Q BY MR. KIRSCHBAUM: IN YOUR DISCUSSIONS WITH THE FAA, WERE YOU PROVIDED ANY GUIDANCE AS TO THE STATUS OF ANY NEGOTIATIONS BETWEEN THE CITY AND THE FAA?

MR. TACHIKI: OBJECTION. HEARSAY.

THE COURT: YOU CAN JUST ANSWER THAT "YES" OR "NO."

THE WITNESS: ASK THE QUESTION AGAIN, WOULD YOU, LLOYD.

MR. KIRSCHBAUM: SURE.

Q WHEN YOU WERE PROVIDING INFORMATION TO THE FAA REGARDING THE VARIOUS SUBSTANTIVE ISSUES THAT YOU JUST RECENTLY LISTED FOR US, DID THE FAA PROVIDE YOU WITH A STATUS OF WHERE THEIR NEGOTIATIONS WITH THE CITY WERE?

THE COURT: JUST ANSWER THAT "YES" OR "NO."

THE WITNESS: YES.

Q BY MR. KIRSCHBAUM: AND IN ADDITION TO PROVIDING INFORMATION THROUGH THE FAA, WAS THERE ALSO DIRECT CONTACT BETWEEN YOURSELF AND ANYONE FROM THE CITY DURING THAT TIME FRAME, WHETHER IT WAS MR. ALSCHULER, MR. JALILI?

MR. TACHIKI: OBJECTION. I'M NOT CLEAR WHAT TIME FRAME WE'RE TALKING ABOUT. IT'S VAGUE.

MR. KIRSCHBAUM: OKAY. LET ME SEE IF I CAN NARROW IT DOWN.

Q ARE YOU ABLE TO NARROW THE TIME FRAME DURING WHICH YOU WERE PROVIDING INFORMATION TO THE FAA AS TO ANYTHING MORE THAN IT OCCURRED BEFORE THE '84 AGREEMENT
AND AFTER THE CITY'S 1981 RESOLUTION TO CLOSE THE
AIRPORT?

A I PROVIDED INFORMATION TO THE FAA FROM THE
VERY BEGINNING OF 1978 OR THEREABOUTS, '77 ALL THE WAY
THROUGH UNTIL THE SIGNING OF THE '84 AGREEMENT.

Q AND DURING THAT TIME FRAME, YOU ALSO
PARTICIPATED IN DIRECT MEETINGS, NOT INVOLVING THE FAA
ACTION BUT INVOLVING THE AIRPORT ASSOCIATION AND THE
CITY; CORRECT?

A I DID.

Q AND DURING THOSE MEETINGS WAS MR. STARK
PRESENT?

A I DON'T REMEMBER MR. STARK BEING IN ANY OF
THOSE MEETINGS. I MAY BE WRONG, BUT I DON'T REMEMBER
MR. STARK BEING THERE.

Q AND THESE WERE MEETINGS THAT YOU HAD WITH THE
CITY MANAGER AND THE ASSISTANT CITY MANAGER?

A YES.

MR. KIRSCHBAUM: NOTHING FURTHER.

MR. TACHIKI: NO FURTHER QUESTIONS.

THE COURT: THANK YOU. YOU MAY STEP DOWN.

WHO ELSE DO WE HAVE AS WITNESSES?

MR. KIRSCHBAUM: YOUR HONOR, I HAVE

MR. DON BRANDSEN.

THE COURT: IS THAT DUPLICATIVE?

MR. KIRSCHBAUM: NO, IT'S NOT GOING TO BE

DUPLICATIVE, BUT I THINK IT'S GOING TO BE -- I DON'T

WANT TO SAY LENGTHY, BUT I THINK IT'S GOING TO EXCEED
THE TIME THAT WE HAVE AVAILABLE THIS AFTERNOON.

THE COURT: ALL RIGHT.

MR. KIRSCHBAUM: PERHAPS I COULD WORK ON NARROWING THE SCOPE OF THAT IF WE COULD START FIRST THING IN THE MORNING.

THE COURT: ACTUALLY, WE NEED TO START AT -- WE GOT A HEARING TOMORROW MORNING. SO I'M GOING TO ASK YOU TO COME IN -- I'LL ASK YOU TO COME IN AT TEN O'CLOCK.

MR. KIRSCHBAUM: SO I ANTICIPATE WE SHOULD BE ABLE TO CONCLUDE BEFORE THE NOON HOUR. AT LEAST I'LL DO MY BEST TO DO THAT.

THE COURT: I DON'T THINK -- I THINK YOU ADEQUATELY BRIEFED THIS. I DON'T THINK -- UNLESS COUNSEL FEELS THERE'S ADDITIONAL BRIEFING NECESSARY. I DON'T KNOW IF YOU WANT TO, BUT I KNOW MR. TACHIKI COVERED IT FAIRLY WELL IN HIS BRIEF.

MR. KIRSCHBAUM: JUST THINKING OFF THE TOP OF MY HEAD, YOUR HONOR, I DON'T BELIEVE I BRIEFED THE STANDING ISSUE SINCE THE MOTION FOR SUMMARY JUDGMENT, AND THAT WAS MORE DIRECTED TO THE FACTUAL SUPPORT RATHER THAN THE LEGAL.

THE COURT: WHAT I WOULD LIKE TO DO RIGHT AFTER YOU FINISH IS RATHER THAN ORAL ARGUMENT, I JUST WANT TO READ THE BRIEFS.

DO YOU WANT TO SUBMIT A FIVE-PAGE BRIEF ON THE ISSUE, MR. KIRSCHBAUM?

MR. KIRSCHBAUM: WELL, OKAY. AT THE COURT'S DISCRETION, I'M GLAD TO DO IT ANY WAY THE COURT WOULD
PREFER. I THINK -- FROM MY PERSPECTIVE, I THINK THAT IF YOU DON'T WANT TO HEAR ORAL ARGUMENT, I'M NOT GOING TO ARGUE FOR THAT. I THINK I COULD REASONABLY SUMMARIZE OUR POSITIONS WITH RESPECT TO THE FACTUAL BASIS ORALLY. IF YOU WOULD LIKE THAT IN WRITING AS WELL, I COULD DO THAT.

THE COURT: IF YOU WANT TO GIVE ME ORAL ARGUMENT, I'LL HEAR YOUR ORAL ARGUMENT. WHAT I AM SAYING IN TERMS OF AUTHORITIES, IF POINTS AND AUTHORITIES IS YOUR POSITION. THAT'S WHAT I HAD IN MIND SPECIFICALLY.

MR. KIRSCHBAUM: OKAY.

THE COURT: WHY DON'T WE DO THAT. WE CAN HEAR ORAL ARGUMENT, BUT I WOULD LIKE SOMETHING SUBMITTED ON POINTS AND AUTHORITIES, NOTHING LONGER THAN FOUR PAGES.

MR. TACHIHI, IF YOU WANT TO BRIEF ANYTHING ADDITIONAL, FOUR OR FIVE PAGES THE MOST. I THINK YOU COVERED IT FAIRLY WELL.

MR. TACHIHI: I'LL DO THAT. I JUST WANT TO GIVE YOU THIS CASE, BECAUSE YOU WANTED THAT ONE CASE.

THE COURT: THAT'S FINE. JUST HAND IT TO MANNY. WE'LL SEE YOU AT TEN O'CLOCK TOMORROW.

(THE PROCEEDINGS WERE ADJOURNED AND CONTINUED TO THURSDAY, MARCH 20, 2003 AT 10:00 A.M.)

(THE NEXT PAGE NUMBER IS 601.)
Santa Monica Airport Commission  
Tuesday March 15, 2016

**Chairman Donald:** We now have a special agenda item, and that item is presenting the airport leasing policy by Mr. Nelson Hernandez, Senior Advisor to the City Manager on Airport Affairs. Anytime you are ready Mr. Hernandez.

**Mr. Hernandez:** Thank you Mr. Chairman, members of the Airport Commission. Tonight I’d like to spend about fifteen minutes giving you a presentation on the airport leasing policy. It’s been under development for a little bit of time now. And let me start with the recommended action, and that is, here, let me, okay, I see how this works. What we’re going to ask of you tonight at the end of the presentation is to recommend that the City Council approve the leasing policy for the management of properties at the Santa Monica Airport, and that will also authorize the City Manager to negotiate and execute leases at the Santa Monica Airport that are congruent with the proposed leasing policy.

**Mr. Hernandez:** Let me start with the policy principals. There are six, but I’ll start with these first three because I think it’s important because it lays out the foundation and the background and the context for what we’re trying to accomplish. So let’s start with these first three. We’re trying to create an environment that has a harmonious relationship, that ensures the health and safety of the airport neighbors, and really if you think about it that’s one of the purposes and principles of government, to promote the health and safety and welfare of its population, so that’s what this leasing policy is intended to do. But it’s intended to do more than that, it’s intended to sustain the airport fund. It’s important that we have a healthy and robust airport fund, that the airport fund be self-sufficient, that it not continue to be a drain on the city general fund as it has been in the past where it owes the city general fund 13 million dollars. We’re also of course looking to comply with any applicable laws and regulations wherever those may be, whether they be local or federal. And then there’s a couple of other points here. As you all know, we have a very vibrant art community here in the city of Santa Monica, which includes the airport. We have education and culture; we have recreation at the airport. So those are important principals. The leasing policy also has provisions for administration and the evaluating of lease applications that we are likely to receive in the future, and again the environmental sensitivity to the community at large.

**Mr. Hernandez:** Let’s move on now to the application of the policy. How would this policy be applied? Well, it’s to help standardize leasing decisions so that they’re equitable and efficient and we’re going to have quite a few leasing decisions to make in the next few months because as you all know, just about all the tenants here at the airport are on very short term lease arrangements. So there’s going to be quite a few leasing decisions to make. And it’s to promote transparency in the recruitment, selection and management of future tenants. This is public property and we should be transparent about who we have here and why we have them and why we don’t have others. And of course it’s to identify the standards of performance that are
expected of airport tenants. We’re looking for tenants who are compatible with the local community and that’s going to be an important criterion.

**Mr. Hernandez:** So, let’s go here to the current leasing environment as this is important. We have 306 tenants at the airport. And of those 306 tenants, six are master tenants and those six master tenants have 323 subtenants. So all together, we have 629 tenants, either master tenants, or subtenants of the master and indirect tenants of the city. And this next slide, which is not as visible as I would have liked, so I’ll have to learn that for the City Council meeting I’ll have to make this larger. What you’ll see here, if you can see it, is it lists the six tenants at the airport who are master tenants and those are: American Flyers, Atlantic Aviation, Gunnell, and there is a series of asterisks around Gunnell which I will explain in a moment, Krueger Aviation, the Santa Monica Arts Center, and the Santa Monica Arts Studios. The reason there is a series of asterisks by Gunnell properties is because Gunnell properties is no longer a tenant of the Santa Monica Airport. They are no longer a tenant of the city. On February 29th they left as per their agreement but they left behind the subtenants which you’ll see by the chart right there. There were seventy-eight. We were working with Gunnell on a more orderly transition. Unfortunately, those negotiations were not successful and so now we have to deal with the aftermath of the fact that those tenants were not vacated per their agreement.

**Mr. Hernandez:** Let’s move on to why we need a new leasing policy. And there’s two basic fundamental reasons. And one of them is of course compliance with federal regulation, with the FAA and the other one is because of the money involved, the leasing revenues. Let’s take those one at a time. According to the FAA we’re obligated to run the airport until 2023. We’re contesting that. But really, regardless of the FAA regulations there is something that’s bigger than that that we agree with. The FAA requires non-discrimination and this is a very progressive city that’s known for its attitude of inclusion and non-discrimination. So we would agree with that, and we would do that regardless of the FAA. And there’s another provision of the FAA that requires there to be basically no monopolies unless there’s some sort of public process. And we would agree with that also that if there’s a service provider here at the airport, then that service provider should win the contract or win that service based on a competition. And there should not be exclusion without some sort of competition.

**Mr. Hernandez:** So let me talk about now, airport leasing revenues. Two-thirds of the money the airport generates comes from leasing. It’s obviously a really critical component of maintaining the airport self-sufficiency. As of this month the airport is still indebted to the city to the amount of about 13 million dollars. So, making sure that that obligation is retired is critical and the way to do that is to have a leasing policy which generates the revenue in order to retire that debt. And of course, we want to create and maintain a path of self-sufficiency and retire the debt as I mentioned.

**Mr. Hernandez:** Now let’s talk about the benefits of the leasing policy. Well, as you can imagine the situation that we have now, there’s uncertainty and businesses need certainty. Government has a responsibility to provide as much certainty as possible given the circumstance that we
operate under, so that’s an important consideration. And the second is to provide the staff with clear direction. We need to be able to understand what the City Council wants so that we can execute their direction, and their directives. And the third reason is we have a couple real estate brokers under contract, one is named Aeroplex and the other is CRG and we need to be able to tell them what we want. ‘Cause if there’s vacancies they need to know who to look for and what type of tenant we want. So that’s really critical that we have a leasing policy. Lastly, if you think about it, we are dealing with public property and having a leasing policy basically provides disclosure as to what the city’s approach will be. And that’s a good thing to do. It’s a good government, it’s a good public administration, it promotes transparency. And those are the four benefits of the leasing policy.

**Mr. Hernandez:** Now let’s go on to some of the highlights of the leasing policy. And let’s start with the first one, which is the tenant mix. We’re looking for a tenant mix that is going to be harmonious and compatible with the local community. A second highlight is we want to, in an orderly fashion, under an orderly transition, we’re proposing to eliminate master tenants. In fact, in some respect we’ve actually initiated this already with the situation of Gunnell where they were the master tenant, they were the largest master tenant, they are no longer there, now we are in the process of dealing with that situation. And as I mentioned earlier we have another five master tenants. But the key here is the orderly transition. A third highlight is the delegation of authority will reside with the city manager through June of 2018. This was per a previous City Council direction, in which they said they did not want to see leases go beyond June of 2018. We want to improve the lease terms so that we’re getting market rate. And that’s the way we sustain the airport. And that’s public property and we have fiduciary responsibility to lease it at market rates. And that’s what we intend to do. As I mention here, the tenants will all have to meet certain performance standards which are outlined in the leasing policy. The last highlight is, as I mentioned, we have a few real estate brokers, and we will be cooperating with those brokers, as well as any other broker who would bring in a potential tenant to our broker. So they’re allowed to cooperate.

**Mr. Hernandez:** There’s a couple of points that I want to mention here on the leasing policy implementation. We’re looking to phase out master tenants in order to accomplish a couple of things, and let me refer to my notes here for this portion. By phasing out the master tenants we will increase our self-sufficiency because we will eliminate the intermediary who was providing that service before. And we think now that we have a property manager under our contract, and we have a strong real estate market that’s in the favor of the landlord; we can absorb those responsibilities and the market is in our favor. So we no longer have to ask someone else to take on the risk of vacancies and other things that come along with being a master tenant. So those are the reasons we are looking to phase out the master tenant arrangements. We’re also looking to phase out incompatible tenants. For example, those tenants that are not consistent with the leasing policy that we are proposing. And that may happen after the first wave with the Gunnell tenants, or it may happen in a later wave. But, we are looking to phase out those tenants that are not compatible with the leasing policy. That concludes the report, those are
the highlights of the leasing policy, I’ve dealt with some implementation issues, I’ve explained
the benefits and the context, the policy foundation, the policy principles, and at this point I’d
like to answer some of your questions.

Chairman Donald: Are there any questions from the commission?

Commissioner Rubin: I have some questions, thank you. I find and maybe you can help me
here, somewhat of an internal inconsistency with some of the things you said in the slide, and
what is in the written report that was attached to the agenda. And I say that, maybe I’m missing
something here, but nowhere in the sort of introduction, “The City Council Seeks to have an
airport tenant mix that is...” is there any mention of aviation tenants which seems to be
perhaps, a facial error. And I raise that because at the same time, you talk about that the city
has legal requirements and protects the city’s rights that relate to leases at the airport, you, in
your presentation you said that the city is well aware of FAA rules and regulations and no
attempt to discriminate. And while it’s certainly abundantly clear what the intention is here,
assuming in 2023 the city makes the decision to close most or all of the airport, as a lawyer, I
have a concern that from a facial standpoint this leasing policy could potentially generate
another round of litigation. Because it looks like the leasing policy on its face is precluding
leasing to aviation tenants. So I guess my question is, if that is the true intention behind this,
shouldn’t you come out and say it so that everybody knows what the policy is?

Mr. Hernandez: I think if you look at the policy under “uses” this has a number of uses that are
permitted. And under “section A” and under “section B” it says, “and other uses as required by
law.”

Commissioner Rubin: Ok, I understand but that’s so generic. It seems to me if you operate an
airport until such time the city makes a decision to close it, then one would need to have
aviation tenants. I mean, I fully support having arts and cultural, and education and perhaps
expanding some land for park, but at the moment, until the airport is closed, it is an airport,
and aviation tenants at least at some level ought to have a ability if they wish to have a lease
until at least 2018.

Mr. Hernandez: They have a right to apply, just like anybody else.

Commissioner Rubin: That’s true, but it seems to me that this basically says, “apply, but you
know what, you’re not going to get a lease.” And I guess my question is, and I’m really playing
the devil’s advocate because we’ve discussed this before, is that, shouldn’t the leasing policy
specifically say that certain kinds of aviation tenants who will meet all sorts of environmental
and other requirements will be given a lease if they meet other terms?

Mr. Hernandez: No, the leasing policy should say exactly what it says. Which is, if you are found
compatible using these standards we will consider your application.
**Commissioner Rubin:** But there’s nothing in here, and I don’t want to continue this as an argument, I want you to help me understand this, and that is that there is nothing in here that says the city will lease to some aviation tenants.

**Mr. Hernandez:** It doesn’t say we won’t.

**Commissioner Rubin:** Well, alright. I don’t want to beg the question, but I hope you understand my concern. I really don’t want to see the city spend more money getting involved in litigation when it doesn’t have to if there were some tweaking of this language.

**Mr. Hernandez:** Well, if you have a specific suggestion please offer it and we can make a note of that when it goes to the full City Council.

**Commissioner Rubin:** Ok, I will. Thank you.

**Commissioner Mark:** Can you expand on what you mean by “compatible” and “standards” when you are talking about compatible with the surrounding area, and by environmental standards what standards exactly and who is setting the standards? And actually for that matter, who is going to do the environmental reviews?

**Mr. Hernandez:** Well the standards are compatibility with the local community in terms of noise, pollution, and other operational matters like that.

**Commissioner Mark:** The FAA at the moment argues that they are compatible with noise and pollution, so I’m wondering who is going to decide that, and what are they going to use as their index?

**Mr. Hernandez:** They will use this leasing policy and the decision made will be made by the City Manager. If it is approved by the City Council, it is delegated to him.

**Commissioner Mark:** So the City’s staff is going to have people who can do environmental reports? And environmental impact reports?

**Mr. Hernandez:** Well the City does environmental impact reports all the time.

**Commissioner Mark:** And so can you give me an example of, well for example how would you, what do you think would be the result of some of the airport meetings … neighborhood compatibility noise and pollution standards? Do you think that the airport does now?

**Mr. Hernandez:** Well I’m not going to answer hypothetical questions. When we get a real application we’ll give you a real answer. But it’s not really … when we have real applications we can do a real test.

**Commissioner Mark:** But they’re going to be based on some specified… I mean if you’re a company and you want to lease here and you want to decide “does my company pollute or not according to the city” do they have to go through the whole study first? How is anyone going to know?
**Mr. Hernandez:** I think that’s a case-by-case basis. They may have to, they may not. I think we’re going to have to see with the specific application that’s in front of us.

**Commissioner Mark:** But if you are applying for a lease, what do you look to, to know, if it makes sense that you’re going to fall afoul of the standard or not? It just seems it’s vague to me what the standard ...

**Mr. Hernandez:** We have applications from some of the former Gunnell subtenants, and there’s a section in there in which they describe their operation, so we’ll take a look at what they said they’re going to do and then we’ll see if –

**Commissioner Mark:** So you are not going to publish any type of standard for people to use as a basis for deciding whether it makes sense for them to apply?

**Mr. Hernandez:** The standard is compatibility with the surrounding community.

**Commissioner Mark:** Uh. Okay.

**Chairman Donald:** The Commissioner looks like he has something to say.

**Commissioner Schmitz:** Now, just one question. Presuming that the FAA permits and requires that the city operate SMO as an airport, then the city would be obligated to do that, and thus, the pollution generated from the aircraft would be imposed on the community, as would the noise given the current regulation. The 95 decibels and their general noise pattern. Would that be correct? My short question is: this lease does not impact that scenario?

**Mr. Hernandez:** no, because those are already requirements.

**Commissioner Schmitz:** Okay, thank you.

**Chairman Donald:** Is there another question?

**Commissioner Rubin:** I have one additional question. In your presentation you said that in the leasing policy, the intention behind the leasing policy would be to phase out incompatible tenants. Could you give us an example of who would be an incompatible tenant under this leasing policy if it were adopted by the City Council?

**Mr. Hernandez:** I could give you an example if I had an actual application. But since we don’t –

**Commissioner Rubin:** We could dance around this for a while. But, what is currently, or who is currently in your view an incompatible tenant to this policy? Assuming everybody already has reapplied? So you get applications in for 600 tenants, or whatever the number is. Who, under this policy, which current tenant would be a tenant who would be an incompatible tenant?

**Mr. Hernandez:** Right. Well keep in mind that I am the senior advisor to the city manager and I would advise him on what I think are incompatible tenants. And then he would make that decision. So I’m not going to preclude or prejudge what decision he would make.
**Commissioner Rubin:** But that’s not helpful.

**Mr. Hernandez:** But that’s the answer I can give you because that’s the situation I’m in.

**Commissioner Rubin:** But if you were asking this commission to approve this policy, and we have questions here and it doesn’t seem like we are getting some answers.

**Mr. Hernandez:** Well, I’m answering. You’re asking me how I would advise the city manager –

**Commissioner Rubin:** No, I didn’t say that. I said that in your opinion, not the city manager’s opinion, but in your opinion today, who would be an incompatible tenant under this policy?

**Mr. Hernandez:** That’s my answer. My opinion doesn’t matter. It’s the opinion of the city manager –

**Commissioner Rubin:** Well it matters to us –

**Mr. Hernandez:** It’s the opinion of the city manager, because he’s the decision maker –

**Commissioner Rubin:** I understand –

**Mr. Hernandez:** So what I would recommend to him, I’d recommend to him, so I’m his advisor I’d recommend certain things, he may follow he may not.

**Commissioner Rubin:** Okay, but that’s really not helpful for us. As we try and work our way through that. And I’m trying to, as I started out in my earlier question, have you help us understand some things. And, that answer really isn’t helpful.

**Mr. Hernandez:** I’m sorry.

**Commissioner Rubin:** Okay.

**Chairman Donald:** I have a couple of questions Mr. Hernandez. First of all, on page four, how do you define “alternative fuels” again? That’s just a very generic –

**Mr. Hernandez:** Yeah, those would be some of the bio fuels that have been talked about in the past. My understanding of the current situation is they are not really buyable at this point. But I think there is research into biofuels, and if they become buyable it would be great to have them used here at the Santa Monica Airport.

**Chairman Donald:** I know that our fifth commission member, it being her job to analyze these fuels, we had a presentation on biofuels that came in and there was switchgrass and there were various things that they were making it out of. They might not have produced a lot of carbon but there is a lot of particulate matter that were not very healthy to use and, so the alternative fuel thing needs to be kind of looked at pretty critically I think.

**Mr. Hernandez:** I’m not sure if they are better or worse than leaded fuel as a pollutant.
**Chairman Donald:** I think it’s possible they are worse. Ultrafine particulates can be really lethal apparently. I mean, it’s a whole new area that’s now being discovered and dealt with. I guess I’m going to echo Commissioner Rubin’s concern. I’m a little uncomfortable with an airport leasing policy that nowhere mentions aviation. I feel I can just sort of see the lawyers lining up to get a hold of this and putting their kids through college on it. I think we might want to try to fine tune so we do need some allowance for the aviation community.

**Mr. Hernandez:** Absolutely, we can report that to the City Council if we do.

**Chairman Donald:** Thank you very much. Is anybody else now? We have Joe Schmitz, Airport Commissioner.

**Commissioner Schmitz:** I’d like to follow up on that, it seems to me that this policy knowingly provides for all of the aviation uses that are currently or would be currently required by the FAA, and yet, it does not specifically address aviation. In broad brush, is there a rationale for why that might be the case?

**Mr. Hernandez:** Well actually aviation is allowed. We have a section in there that allows for daily and transient parking of aircraft, so that tells you that it’s contemplated that aviation at least for you know, daily and transient parking would be permitted.

**Commissioner Schmitz:** So aviation is clearly –

**Mr. Hernandez:** And it’s not excluded anywhere in the uses.

**Commissioner Schmitz:** Right –

**Mr. Hernandez:** We could have listed a lot of things, but we didn’t.

**Commissioner Schmitz:** Thus, aviation is clearly envisioned in this leasing policy and this policy doesn’t attempt to preclude, uh...

**Mr. Hernandez:** Well, under section B where it says “other uses required by law” that would be the...there’s a provision.

**Commissioner Schmitz:** Right. Thank you.

**Chairman Donald:** Yes, Stephen?

**Commissioner Mark:** Just let me, I’ve gone over this again a little bit. We have at the moment some requirement to operate this land as an airport, and as everyone is saying that certainly implies a certain number of aviation services. It would seem to me that...I’m intuiting... that we want aviation services to be compatible with the neighborhood, that what would you would be going for would be the minimal necessary aviation services in order to meet the requirement to say,” yes this is an airport.” And, so it becomes the question of, what if you get applications from more aviation services than you need to minimally say, “yes we are an airport?” Are you, are you able to come up with standards under which you say, yes, “some people meet....” I
guess what I’m saying is I clash between this compatibility issue and what keeps coming up is it being illegal for us being able to discriminate against one aviation service versus another. There doesn’t seem to be anyway to cap that. And I guess, one of the reasons I’m asking about compatibility and standards is that it seems to me you need to be able to have a standard that allows for those minimally necessary aviation services and it might require looking at what other airports that can call themselves airports, what are the least services that they offer? So that we meet that requirement. And find out what they, what kind of limits can you put on pollution and other environmental impacts from the kinds of facilities, aviation facilities that we have at these smaller airports. And use at those as a standard. This is why I’m left a little befuddled of their not having a published standard and it does tie into this issue of aviation.

Mr. Hernandez: Are you suggesting that the applicants for example with aviation be required to do an EIR to lease space at the airport?

Commissioner Mark: Well, everybody has to...

Mr. Hernandez: Because that might be something we could recommend.

City Attorney Campbell: No, we can’t do that.

Mr. Hernandez: Why not?

City Attorney Campbell: Well, you cannot at the local level force, will not enforce or impose environmental regulations or requirements or loopholes because that’s clearly occupied by state law. The state of California has, I don’t know the name of the act...

Commissioner Rubin: CEQA?

City Attorney Campbell: Yes, thank you, CEQA.

Mr. Hernandez: I know CEQA very well.

City Attorney Campbell: I’m sure you do, but I’m just saying as a matter of choice of laws, and state preemption, we at local government can’t do that.

Mr. Hernandez: Well, I thought that’s where Commissioner Mark was going with his suggestion. So my fault for interrupting.

Commissioner Mark: I’m really just suggesting specificity. And I was reading that it says “new requests to leases, assuming leases will be reviewed for potential negative effects on the environment.” You know, it seems to me that some people feel that some aviation users have a negative effect on the environment. And if there’s not a standard as to what that consists of, you are going to end up with a double standard. And that says, “okay, we have standards for everyone except aviation” and that’s sort of spelling this stuff out. It’s leaving a vague feeling as to what you intend, and the public doesn’t really know either. And I’m saying in my perfect world, there would be a cap on aviation so we met the standard of being an airport, and we can
look at other airports to point to and say, all these other places, they have this, this and that. And we can say we are an airport. But if it turns out, that’s not good enough, we need to have some sort of determination about that and then, okay, what are the standards going to be for those people because it seems like it is going to be different.

**Chairman Donald:** And Commissioner Schmitz?

**Commissioner Schmitz:** You know; it seems to me that there’s two issues. First of all, there’s tension between desirability, generality, and specificity to the extent that this is a leasing policy, and therefore it is governance to all leases, whether it be aviation, aviation support, art or other. It should encompass an ease of all potential leases. I don’t think there’s any doubt that there’s controversy between whether or not Santa Monica should operate an airport at all and in fact, we had a vote in 2014 and I don’t think anyone would say the residents said to close the airport, but they certainly said to constrain the jet traffic and change the city charter, which happened. So, I would think it’s not the purview of this leasing policy to dictate anything regarding whether or not we have jets or not, or light airplanes or not, but ought to be broad enough to encompass them. I’m comfortable with the policy as it’s written, as long as you feel confident that someone who is flying an airplane would say, “because this lease does not say ‘airplane’ in it, therefore it’s a terrible thing.” Thank you.

**Chairman Donald:** Just one comment, and maybe Nelson or Ivan can speak to this. A couple of airports, to the degree that the federal government controls airports, the EPA has been banned from, or kept from setting standards for airport pollution correct? For exhaust and so forth? And that’s my understanding anyway. And so, and I don’t know if that would apply to a general aviation airport of this size, and also does that mean that SEQUIA kicks in as a result? I know that Commissioner Paulson said that was a problem but to what standard on a lot of the things she was talking about?

**City Attorney Campbell:** What Commissioner Paulson attempted to do was to regulate to have a local ordinance that sought to regulate the emissions coming out of aircraft engines, and there was a specific federal statute in the Clean Air Act which specifically covered that. I’m not sure exactly how SEQUIA would be implicated here. I don’t know if this is answering your question, but, it’s hard for me to draw a connection from a leasing policy enacted by local government that seeks to intrude upon...

**Chairman Donald:** No, no, no, I understand that. It seems to me that the state would...there would be some...specificity...if I can even say that word

**City Attorney Campbell:** You know what, I think Nelson could speak to that. I don’t think the intent behind the city’s leasing policy is to regulate any type of environmental factors or conditions or impacts or anything like that

**Chairman Donald:** What if someone wanted to put a battery disposal factory at the airport, I mean, they couldn’t do that right?
**City Attorney Campbell:** I don’t know, Stelios, could someone put in for a battery disposal factory at the airport?

*Laughter*

**Chairman Donald:** Well, there are several industries that could produce certain types of pollution!

**Commissioner Rubin:** Like Exide!

**City Attorney Campbell:** What I’m saying is, I think the city would be able to say no on other grounds other than environmental, you know, incompatibility. So, what I want to make clear, Nelson just confirmed it. I don’t that that’s the intent of the city’s proposed leasing policy, to, do any sort of environmental regulation that intrudes upon federal...

**Chairman Donald:** That’s obvious. Yep. Okay, so. Are all the commissioner’s exhausted of questions?

**Commissioner Rubin:** I’m sure there will be more.

**Chairman Donald:** Okay, and then we’re going to go to the public comment.