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*FOR COURT USE ONLY*

**ELECTRONICALLY FILED**
Superior Court of California,
County of San Diego
**03/04/2021** at 11:25:00 AM
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF** San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice

PLAINTIFF/PETITIONER: Citizens for a Friendly Airport
DEFENDANT/RESPONDENT: County of San Diego

# NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
37-2018-00057624-CU-TT-CTL

*(Check one):* ☑ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on *(date)*: February 25, 2021

2. A copy of the judgment, decree, or order is attached to this notice.

Date: March 4, 2021

Cory J. Briggs
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

Cory J. Briggs
(SIGNATURE)



Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

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Attorneys for Plaintiff and Petitioner Citizens for a Friendly Airport



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

| | |
|---|---|
| CITIZENS FOR A FRIENDLY AIRPORT,<br><br>Plaintiff and Petitioner,<br><br>vs.<br><br>COUNTY OF SAN DIEGO; and DOES 1 through 100,<br><br>Defendants and Respondents;<br><br>DOES 101 through 1,000,<br><br>Defendants and Real Parties in Interest. | CASE NO. 37-2018-00057624-CU-TT-CTL<br><br>**[First Amended ~~Proposed~~] JUDGMENT ON COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE**<br><br>Action Filed: November 6, 2018<br>Department: C-71 (Pollack) |

This lawsuit came on regularly for a merits hearing at 9:00 a.m. on January 25, 2021, in Department C-71 of the San Diego County Superior Court, with the Honorable Gregory Pollack presiding. Plaintiff and Petitioner CITIZENS FOR A FRIENDLY AIRPORT appeared by and through attorney Cory J. Briggs; Defendant and Respondent COUNTY OF SAN DIEGO appeared by and through attorney Joshua M. Heinlein. At the conclusion of the merits hearing, the Court took the matter under submission. On January 26, 2021, the Court issued a minute order setting forth its ruling on the merits ("Ruling"), a copy of which is attached to this Judgment on Complaint for Declaratory and Injunctive Relief and Petition for Peremptory Writ of Mandate ("Judgment") as Exhibit "A."

Based on the Ruling, **IT IS NOW ORDERED, ADJUDGED, AND DECREED** that:

1. All approvals of Defendant and Respondent COUNTY OF SAN DIEGO for the project that is the subject of this lawsuit ("Approvals") – including each of the seven components of the "ACTION" taken by the Board of Supervisors on the project as set forth in Minute Order no. 1 dated October 10, 2018 (*see* Admin. R. 41:7549-7550) – are now declared to be invalid.

2. A peremptory writ of mandate shall issue to command Defendant and Respondent COUNTY OF SAN DIEGO to set aside the Approvals and to take appropriate actions to comply with the California Environmental Quality Act and the Planning and Zoning Law.

3. The Court reserves jurisdiction to order injunctive relief as necessary or appropriate to ensure compliance with this Judgment and any peremptory writ of mandate issued hereunder.

4. Plaintiff and Petitioner CITIZENS FOR A FRIENDLY AIRPORT shall recover $_____ from Defendant and Respondent COUNTY OF SAN DIEGO for costs incurred in connection with this lawsuit [to be filled in by the Clerk of the Court if and when a memorandum of costs has been filed and the Court has ruled on any motion to strike/tax or the time for filing such a motion has lapsed].

5. Attorney fees, if sought by Plaintiff and Petitioner CITIZENS FOR A FRIENDLY AIRPORT, may be addressed in a future noticed motion.

Dated: 2-25-, 2021.

Judge of the Superior Court

Judge Gregory W Pollack

APPROVED AS TO FORM:

Cory J. Briggs

Joshua M. Heinlein

**JUDGMENT ON COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE**

Exhibit "A"

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF SAN DIEGO**
**CENTRAL**

**MINUTE ORDER**

DATE: 01/26/2021 TIME: 02:09:00 PM DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack
CLERK: Terry Abas
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2018-00057624-CU-TT-CTL** CASE INIT.DATE: 11/06/2018
CASE TITLE: **Citizens for a Friendly Airport vs County of San Diego [E-FILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

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**EVENT TYPE**: Ex Parte

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**APPEARANCES**

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There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 1/25/21 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiff/petitioner Citizens for a Friendly Airport's (Petitioner) complaint/petition for writ of mandate (Petition) as follows:

Petitioner is represented by Cory J. Briggs.

Defendant/Respondent County of San Diego and Bd. of Supervisors of the County of San Diego (collectively County) are represented by Joshua M. Heinlein.

As a preliminary matter, the County's request for judicial notice is granted and the documents Petitioner provided in its Notice of Lodgment of Omitted Administrative Record Items will be added to the administrative record.

Petitioner challenges the County's approval, on October 10, 2018, of the McClellan-Palomar Airport Master Plan Update (Project) and certification of the Project's Final Program Environmental Impact Report (PEIR). (Administrative Record (AR), 41:7548-50).

The Court has reviewed the record in light of the parties' briefs, oral arguments and the applicable law and concludes the Petition should be granted in part and denied in part for the reasons stated below.

*Standard of Review.* Petitioner's CEQA claims are reviewed for whether there was a prejudicial abuse of discretion. An abuse of discretion is shown if the agency did not proceed as required by law, or if its decision is not supported by substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 426.) Under this standard, reviewing courts determine de novo the legal question whether the agency has complied with the procedures mandated by statute, but they afford deference to the agency's substantive factual conclusions. (*Ebbetts Pass Forest Watch v. Cal. Dept. of Forestry & Fire Protection* (2008) 43 Cal. 4th 936, 944.) A reviewing court may "'not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, or on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.'" (*Ibid.*)

The first issue is whether the County was required to obtain a conditional use permit amendment.

One, the Complaint adequately alerted the County of its alleged violation of CUP-172. To the extent that the County argued that the Petition failed to plead a violation of CUP-172 on the ground of uncertainty, the Court agrees with Petitioner that this issue should have been raised via a demurrer or answer. (Code Civ. Proc., §430.10(f).) Furthermore, this argument is clearly encompassed within the fourth cause of action for violation of the Planning and Zoning Law. Finally, both the administrative record (AR 20:4561, 4575, 4720, 4853, 4865, 4922-4923) and Petitioner's brief re: motion to consolidate filed on July 28, 2020 contain references to CUP-172 (AR 20:4561, 4575, 4720, 4853, 4865, 4922-4923.) Thus, the County has long been apprised of the claims being asserted by Petitioner with respect to CUP-172.

Two, the County waived its immunities. It obtained CUP-172 as a condition of the City of Carlsbad's annexation of the airport and rezoning of the land for airport use. (Petitioner's Notice of Lodgment of Omitted Administrative Record Items (LOARI), Exhs. 4, 5.) Notably, the Local Agency Formation Commission stated the following: "In order to comply with the requirements of the Carlsbad Zoning Ordinance, an appropriate zoning designation must be placed upon the airport, and a Conditional Use Permit *must* be obtained by the County. The City of Carlsbad and the County are in agreement with this procedure." (Emphasis added) (LOARI, Exh. 5, p. 19.) Thus, the evidence in the administrative record indicates that the County voluntarily and intentionally relinquished its immunities with respect to the airport.

Three, Petitioner has standing to maintain the CUP-172 claim pursuant to the public interest exception set forth in *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 913-914.)

Four, the Project required an amendment to CUP-172. The Project changes the designation of the airport. Planning Commission Resolution No. 1699 stated that "[t]he existing designation of the airport as a General Aviation Basic Transport Airport shall not change unless an amendment to this CUP is approved by the Planning Commission." (AR 43:7572.) Here, the County changed the designation of the airport from B-II to D-III. (AR 41:7549.) Notably, the County did not address this issue in its opposition and generally argues that it was not required to obtain an amendment. (*See* Oppo., p. 12.) At oral argument, the County argued that the proposed D-III designation was encompassed within the General Aviation Basic Transport Standard, which was operative at the time CUP-172 was approved. (AR 7:842, 36:6934.) However, it provided no evidence in the administrative record to support this statement. Furthermore, the administrative record stated that "[t]he airport currently meets all B-II design criteria...." (AR 36:6794.) If, as the County argued, the D-III designation was encompassed within the prior standard, why did the PEIR explicitly state that the Airport fell within the B-II design criteria? Notably, the Palomar Airport Advisory Committee failed to approve the Project with the D-III designation. (AR

40:7546.) Finally, the administrative record contained evidence showing that the change from B-II to D-III would allow larger aircraft to takeoff with more fuel. (AR 36:6789; see also AR 20:4602.) This evidences an intent to use the Airport in a way that was not previously authorized.

However, the Court does agree with the County's interpretation of the term "expansion" and that no amendment was required on the basis of the proposed changes set forth in the Project.

The second issue is whether the County adequately analyzed the Project's noise impacts.

One, the PEIR adequately analyzed the noise impacts of non-commercial aircraft. In response to comment L3-70, the County states that "non-commercial aviation activity was analyzed, and potential noise impacts were disclosed in the PEIR and technical studies. The PEIR's Noise Impact Analysis (Appendix D) Table 5 describes the anticipated increase in operations for all aircraft types, including non-commercial. Figure C1 from the Noise Impact Analysis (Appendix D) presents a comparison of existing conditions (2016) to future conditions (2036) including full implementation of the Proposed Project, including forecasted commercial and non-commercial aircraft operations." (AR 20:4614; *see also* AR 20:4615.)

Two, the PEIR's study area and methodology were inadequate. Public Resources Code section 21001 subd. (g) declared that it is the state's policy to '[r]equire governmental agencies at all levels to consider qualitative factors as well as economic and technical factors...." In *Berkeley Keep Jets Over the Bay Committee v. Bd. Of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1377-1383 (hereafter *Berkeley*), the court criticized an agency's sole reliance on the CNEL methodology for CEQA purposes. It also stated that "the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA. (*Id.,* at p. 1381.) Furthermore, the court in *Berkeley* cited to *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882, for the proposition that "citizens' personal observations about the significance of noise impacts on their community constituted substantial evidence that the impact may be significant and should be assessed in an EIR, even though the noise levels did not exceed general planning standards." Here, the administrative record indicates that CNEL levels in the City of Vista were not identified as part of the analysis despite the fact that Vista residents and other out of contour communities reported significant noise impacts during the public comment period. (AR 9:1449, 20:4644-4655.) CEQA requires an agency to assess the impacts in the areas affected by the proposed project. (CEQA Guidelines, §15360; Pub. Res. Code §20160.5; *see also Citizens of Goleta Valley v. Bd. of Supervisors of Santa Barbara Cty.* (1990) 52 Cal.3d 553, 575.) Here, the County admitted that "CNEL levels in the City of Vista are not identified as part of the analytic...." (AR 20:4651.)

Three, the threshold of significance for the noise impacts analysis was appropriate.

As a preliminary matter, the Court notes that the administrative record contained evidence that this issue was raised at the administrative level. (AR 20:4644, 4757, 5061.)

CEQA Guidelines section 15064.7 subd. (c) states that the determination of the appropriate threshold is made by the lead agency. Notably, Petitioner's Exhibit at page 33 states that "a commonly used baseline criterion is a CNEL of 65dB." Furthermore, the administrative contains the County's basis for why it believed it was appropriate to use this threshold. (AR 7:678-682, 12:3371-3376, 20:4636, 5216-5217.)

Four, the County's responses to Comments were adequate. Petitioner's argument as to this issue is based on the County's alleged failure to assess the effects of non-commercial aircraft operations. This

argument fails since this Court has determined that the County did assess its effects in the PEIR for the reasons stated above.

The third issue is whether the County adequately analyzed the Project's traffic impacts.

The County presented evidence that the PEIR analyzed traffic conditions for the following scenarios: (1) Existing Conditions: 2016, (2) Existing Conditions Plus Project, (3) Near-Term Conditions (i.e., existing + cumulative): 2020, (4) Near-Term Conditions Plus Project, (5) Long-Term Conditions: 2036, and (6) Long-Term Conditions Plus Project. (AR 7:709.) Citing AR 7:717, it contends that natural growth of non-commercial operations was accounted for in SANDAG's model forecasts and included in the PEIR's cumulative impacts analysis. (*See also* AR 20:4618, 5218-5219, 5250.) Thus, substantial evidence exists to show that the County adequately analyzed the Project's traffic impacts.

The fourth issue is whether the County adequately analyzed the Project's GHG emissions and climate change impacts.

One, the County presented substantial evidence to support its contention that the PEIR analyzed the GHG emissions and climate-change impacts from all potential sources, including non-commercial operations. For example, the total emissions for each plan scenario included GHG emissions from non-commercial aircraft. (AR 7:813-816.) It also demonstrated how emissions from non-commercial aircraft could be calculated based on the information provided in the PEIR. (Oppo., p. 27.)

Two, the PEIR was not required to analyze potential methane emissions from drilling holes into the existing landfill. CEQA Guidelines section 15152 subd. (c) allow the deferral of "detailed, site-specific information." The court in *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1047, noted that a program EIR "does not examine the site-specific impacts of the many individual projects that may be proposed in the future." Here, project-specific engineering design plans do not exist for the portion of the runway extension that would conceptually be built over the existing landfill. (AR 7:567.) In a response to comment, the County stated that "[a]dditional analysis under CEQA will be required for projects at the time that they are designed and proposed. While the County has calculated estimated construction emissions to the extent feasible, additional analysis pursuant to CEQA will be required as project-specific elements are funded, designed, and proposed. (AR 20:5498; *see also* AR 20:5192, 5337.) Finally, the PEIR states that any construction methods will ensure that methane from the inactive landfill will not be emitted. (AR 7:672.)

Three, the County used a proper baseline. Under CEQA Guidelines, the baseline normally consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time...environmental analysis is commenced." (CEQA Guidelines, §15125(a).) However, the California Supreme Court has interpreted this guideline to give lead agencies significant discretion in determining the appropriate existing conditions baseline. (*Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 453; *see also Communities for a Better Environ. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 336.) The City's determination of baseline conditions is reviewed for substantial evidence. (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 337.)

Here, the PEIR states that the baseline "shall be the environmental conditions as they existed at the time the NOP was published, which was February 2, 2016 for the Proposed Project. (AR 7:570; *see also* AR 7:791.) In a response to comment, the County also explained why a comparison using the same future year, 2036, was also appropriate. (AR 20:5339-5340; *see also* AR 20:4616, 20:5336-5337.) In

*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57, Cal.4th 439, 454, the California Supreme Court concluded that "nothing in CEQA law precludes an agency, as well, form considering both types of baseline-existing and future condition-in its primary analysis of the project's significant adverse effects." It also held that "while an agency preparing an EIR does have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value." (*Id.*, at p. 457.) Here, in the above noted response to comment, the County stated that "[c]omparing the Mater Plan Update's full implementation timeframe (i.e., 2036) to existing conditions (i.e., 2016) would [] be misleading and uninformative as conditions would naturally evolve over the 20-year planning period regardless of the Proposed Project. Therefore, for the purposes of the PEIR, emissions associated with the Proposed Project in 2036 were compared to environmental conditions projected to occur in 2036 without the Proposed Project in order to show impacts associated with the project."

The fifth issue is whether the County adequately analyzed the Project's energy impacts

One, Petitioner did not wave its challenge to the PEIR's energy impacts analysis as the Court finds that its citation to the administrative record adequately presented its analysis and baseline arguments in its moving papers.

Two, the County used a proper baseline. The administrative record indicates that the Project's electricity and fuel consumption are compared to existing conditions. (AR 7:874, 878 (fuel); AR 7:871-872 (electricity); *see also* AR 20:5501-5502, 5534.) It also explained its comparisons. (AR 20:4616, 5341.)

Based on the foregoing, the Petition is granted as to the Planning and Zoning Violation and the study area and methodology issue with respect to noise impacts but is denied in all other respects. Thus, the Court finds that (1) an amendment to CUP-172 by the City of Carlsbad is required and that (2) the study area with respect to noise impacts should include all areas where public comments had reported significant noise levels.

The Petitioner is directed to prepare the Judgment in accordance with this ruling.

IT **IS SO ORDERED.**

R. C. Pollack

Judge Gregory W Pollack

# PROOF OF SERVICE

1. My name is Keri Taylor. I am over the age of eighteen. I am employed in the State of California, County of San Bernardino.

2. My ✓ business ___ residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111 Upland, California 91786.

3. On February 24, 2021, I served ___ an original copy ✓ a true and correct copy of the following documents: [First Amended Proposed] JUDGMENT ON COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

___ ***by personal service***. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

***by U.S. mail***. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

___ deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

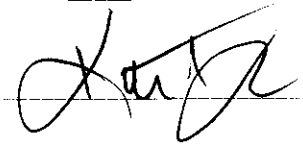
I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of Upland, California.

___ ***by overnight delivery***. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

___ ***by facsimile transmission***. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

✓ ***by e-mail delivery***. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws ___ of the United States ✓ of the State of California that the foregoing is true and correct.

Date: February 24, 2021 Signature: 

**SERVICE LIST**

*Citizens for a Friendly Airport v. County of San Diego, et al.*
San Diego County Superior Court Case No. **37-2018-00057624-CU-TT-CTL**
(Related Case: 37-2019-00028690-CU-TT-CTL)

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*Attorneys for Defendants and Respondents:* County of San Diego and Board of Supervisors of the County of San Diego

# PROOF OF SERVICE

1. My name is **Ruth Flores**. I am over the age of eighteen. I am employed in the State of California, County of **San Bernardino**.

2. My ✓ business ___ residence address is **Briggs Law Corporation, 99 East "C" Street, Suite 111 Upland, California 91786**.

3. On **March 4, 2021**, I served ___ an original copy ✓ a true and correct copy of the following documents: **Notice of Entry of Judgment**

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

___ ***by personal service.*** I personally delivered the documents to the person(s) at the address(es) indicated on the list.

___ ***by U.S. mail.*** I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

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___ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of **Upland**, California.

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✓ ***by e-mail delivery.*** Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws ___ of the United States ✓ of the State of California that the foregoing is true and correct.

Date: **March 4, 2021**

Signature: Ruth Flores

**SERVICE LIST**

*Citizens for a Friendly Airport v. County of San Diego, et al.*
San Diego County Superior Court Case No. **37-2018-00057624-CU-TT-CTL**
(Related Case: 37-2019-00028690-CU-TT-CTL)

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