

To: Orange County Board of Supervisors

September 9, 2019

Reference to September 10<sup>th</sup> Agenda item #18- Authorize RFP for FBOs

Issue Statement- re: concerns of counsel on potential ANCA violation implied in the requested added language to RFP questionnaire – This is a “non- issue”.

This is in response to County Counsel’s concern and implied opinion that to amend the Request For Proposals (RFP) for the General Aviation Improvement Project (GAIP) at JWA to provide additional hangars to accommodate GA aircraft with wingspans less than 40’ would somehow risk violation of the Airport Noise and Capacity Act of 1990 (ANCA). The basis for the opinion is presumably because the requested amendment seeks to reduce the number of hangar doors, currently allocated, at 49’, because the larger doors can accommodate aircraft with greater wingspans. The theory, as yet unexplained, seems to be that the requested limitation would constitute a denial of access to the larger GA aircraft, including Jet aircraft used for charters, that can accommodate up to 30 passengers on a scheduled basis.

The reality, however, is that the project as currently planned and illustrated in the RFP is itself a patent violation not only of ANCA but also of FAA’s contractual conditions on airport funding, the Grant Assurances, and specifically Grant Assurance 22, Economic Non-Discrimination, 49 U.S.C. 47107. This is so for at least two reasons: (1) the arbitrary reduction in the space allocated in the Project to small GA aircraft, tie-downs as well as hangars, constitutes a denial of access to a component of the aviation community that not only seeks access now, but has been a vital part of the aviation community at JWA since its inception; and (2) the refusal to amend the RFP to accommodate small GA aircraft in the same proportion as that category currently constitutes of the total General aviation fleet, i.e. 75% flies in the face of FAA’s admonition that all federally obligated airports “be available for public use on reasonable conditions and without unjust discrimination.” Unjust discrimination may occur against an individual or the provider of a type or class of service. FAA Order 5190.6B , 9-1, n. 56. Precisely that type of discrimination is occurring here, where the RFP not only denies small GA aircraft a reasonable number of new accommodations commensurate with its current level of incumbency on the airport, but presages the projects plan to reduce the current number of hangars and tie-downs CURRENTLY available. Perhaps most important from the perspective of “economic” non-discrimination is the reality that, even though the 49foot entry hangars can accommodate both large and small G.A. aircraft, the cost for the larger space would effectively price small G.A. aircraft out of the market, resulting in economic discrimination.

For these reasons we urgently request the OC Airport Commissioners recommend to the OC Board of Supervisors to direct staff to insert into the current RFP, the language recommended by SoCal Pilots and supported by the AWG, SPON, CAANP, and the entirety of the impacted communities surrounding JWA, prior to release for bids.

Submitted on behalf of the collective groups by-



Mel Beale, President, Airport Working Group