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CITY OF CARLSBAD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CITIZENS FOR A FRIENDLY
AIRPORT,

Plaintiff and Petitioner,

v.

COUNTY OF SAN DIEGO; and DOES 1
through 100,

Defendants and Respondents,

AMERICAN AIRLINES, INC.; and
DOES 101 through 1000,

Defendants and Real Parties
In Interest,

CITY OF CARLSBAD,

Plaintiff-Intervenor.

Case No. 25-CU-004719C

**EX PARTE APPLICATION FOR LEAVE
TO INTERVENE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE APPLICATION**

Code Civ. Proc. §§ 387, 525, 1060

ASSIGNED FOR ALL PURPOSES TO:
HON. GREGORY W. POLLACK
DEPT. C-71

Date: May 29, 2025
Time: 8:45 a.m.

Action Filed: January 27, 2025

Filed Concurrently with Declaration of Tori B.
Gibbons in Support of Ex Parte Application for
Leave to Intervene; [Proposed] Order Granting
Ex Parte Application for Leave to Intervene

1 **APPLICATION**

2 Proposed Intervenor City of Carlsbad (“City”) files this unopposed ex parte application
3 for leave to intervene in the above-captioned action pursuant to Code of Civil Procedure
4 (“CCP”) section 387, subsections (c) and (d). The City seeks to intervene as Plaintiff in this
5 action to compel Defendant/Respondent County of San Diego’s (“County”) to comply with
6 Conditional Use Permit No. 172 (“CUP-172”), which the City issued to the County on
7 September 24, 1980.

8 This ex parte application is made pursuant to Code of Civil Procedure section 387 and
9 California Rules of Court, rules 3.1200 et seq., and is supported by the Memorandum of Points
10 and Authorities, the Declaration of Tori B. Gibbons in Support of Ex Parte Application for
11 Leave to Intervene, and the [Proposed] Order Granting Leave to Intervene, and based upon all
12 pleadings, papers, and records on file herein, as well as upon such further argument and
13 evidence as may be presented at or before the hearing on this matter.

14 Good cause exists for granting the City’s application. An ex parte application for leave to
15 intervene is authorized under Code of Civil Procedure section 387, subsection (c), and the City
16 can make the required showing for both mandatory intervention (CCP, § 387(d)(1)(B)) and
17 permissive intervention (CCP, § 387(d)(2)). The City has a direct and immediate interest in the
18 subject matter of the litigation because it is the governmental authority that issued, and is
19 charged with enforcing, CUP-172, the interpretation of which is at issue in this case. In addition
20 to section 387’s express authorization of ex parte applications for intervention, ex parte relief is
21 warranted because the earliest hearing date available for a noticed motion for leave to intervene
22 is not until December 2025—after this Court’s November 14 case management conference
23 (“CMC”) and hearing on the County’s demurrer and motion to strike. Absent ex parte relief, the
24 City will be harmed by being unable to participate in case management discussions or provide
25 argument as needed regarding the County’s motion and demurrer.

26 The City notified counsel for Petitioner/Plaintiff Citizens for a Friendly Airport
27 (“C4FA”), the County, and Defendant/Real Party in Interest American Airlines (“American
28 Airlines”) of this ex parte application on May 6, 2025. (Declaration of Tori B. Gibbons in

1 Support of Ex Parte Application to Intervene (“Gibbons Dec.”), ¶ 10.) As set forth in the
2 accompanying Declaration of Tori Gibbons, the City did not receive a response from any party
3 stating that they intended to oppose this declaration. (*Id.*)

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 The City of Carlsbad petitions this Court for leave to intervene in Case Number 25-CU-
7 0004719C pursuant to California Code of Civil Procedure section 387, subsection (c), which
8 authorizes nonparties to seek leave to intervene through an ex parte application. The City’s
9 proposed Complaint in Intervention is attached hereto as Attachment A.

10 The City has a direct and immediate interest in the subject matter and disposition of this
11 action. Among other things, Petitioner/Plaintiff C4FA alleges that the County of San Diego’s
12 expanded airport operations at the McClellan-Palomar Airport (“Palomar Airport”) violated
13 CUP-172, the conditional use permit that the City issued to the County in 1980. As the entity
14 that issued CUP-172, the City has a direct, immediate, and unique interest in its interpretation
15 and enforcement. The City uses conditional use permits to ensure that actions within a zoned
16 district are consistent with existing zoning laws and compatible with the public welfare. The
17 City also has an interest in ensuring that the previous judgment from this Court interpreting
18 CUP-172 is given its full effect.¹

19 The City is entitled to intervene as a matter of right because it has an interest in the
20 enforcement and interpretation of CUP-172, the disposition of this action may impair or impede
21 that interest, and the City’s interests are not adequately represented by the current parties. (CCP,
22 § 387(d)(1)(B).) Alternatively, the City should be permitted to intervene because it has a direct
23 interest in this litigation, it will not enlarge the issues in the case, and any opposition by the
24 original parties is outweighed by the City’s reasons for intervening. (CCP, § 387(d)(2); *see, e.g.*,
25 *State Water Board Cases* (2023) 97 Cal.App.5th 1035, 1050.) Further, the City’s intervention
26 will help ensure the Court has all the relevant information pertaining to the conditions set out in
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28 ¹ *See Citizens for a Friendly Airport v. County of San Diego*, San Diego Superior Court Case
No. 37-2018-00057624-CU-TT-CTL.

1 CUP-172. For these reasons, the Court should grant this application for leave to intervene.

2 **II. STATEMENT OF FACTS**

3 Palomar Airport, which is located within the municipal boundary of the City of Carlsbad,
4 began operations in 1959. The County of San Diego owns and operates Palomar Airport. In
5 1978, the Airport was annexed to the City. (Plaintiff/Petitioner C4FA’s Opening Exhibits in
6 Support of Motion for Preliminary Injunction (“C4FA PI Exhibits”), March 10, 2025, Vol. 1,
7 Ex. 3.) As part of the annexation process and in compliance with the City’s Zoning Code, the
8 Local Agency Formation Commission (“LAFCO”) required that an appropriate zoning
9 designation be placed on Palomar Airport property and required the County obtain a conditional
10 use permit from the City, which the County did. (*Id.* at 4.) On September 24, 1980, the City
11 issued CUP-172 to the County. (C4FA PI Exhibits, Vol. 1, Ex. 2.)

12 CUP-172 placed a number of conditions on the County’s use and operation of the
13 Palomar Airport. CUP Condition 8, in particular, limits Airport operations to enumerated
14 “permitted uses” and provides that “[a]pproval of any uses not specifically listed . . . and/or
15 expansion of the airport facility shall require an amendment to the Conditional Use Permit.” (*Id.*
16 at 3.) CUP Condition 11 provides that “[t]he existing designation of the airport as a General
17 Aviation Basic Transport Airport shall not change unless an amendment to this CUP is approved
18 by the Planning Commission.” (*Id.*)

19 This Court addressed the applicability of CUP-172 to the County in prior litigation
20 between C4FA and the County. (*Citizens for a Friendly Airport v. County of San Diego*, San
21 Diego Superior Court Case No. 37-2018-00057624-CU-TT-CTL; C4FA PI Exhibits, Vol. 1, Ex.
22 1, 2021 Judgment.) After ruling that the County had waived its intergovernmental immunities
23 under Government Code sections 53090 and 53091, this Court found that CUP-172 prohibits the
24 County from changing the Palomar Airport’s FAA Airport Reference Code designation to a
25 higher designation that would “allow larger aircraft to takeoff with more fuel” without first
26 obtaining an amendment to CUP-172 from the City. (*Id.* at 2-3.) This Court’s analysis focused
27 on evidence of the County’s “intent to use the Airport in a way that was not previously
28 authorized” by CUP-172. (*Id.*) In its revised Airport planning documents following the 2021

1 Judgment, the County agreed to “seek an amendment to CUP-172 for any change in the existing
2 [Airport designation] to something greater.” (C4FA PI Exhibits, Vol. 1, Ex. 4 at 2-2-35.)

3 In the four years since this Court’s judgment, the County has made significant efforts to
4 expand Palomar Airport’s operations and to allow larger commercial aircraft to use its facilities
5 without seeking an amendment to CUP-172. The latest example of its effort to operate a de facto
6 commercial airport without obtaining a CUP amendment occurred on January 8, 2025, when the
7 County approved a lease with American Airlines to allow commercial air service at the Palomar
8 Airport using a larger 76-seat passenger jet. (C4FA PI Exhibits, Vol. 2, Ex. 7.) The County
9 determined that this lease approval did not necessitate an amendment to CUP-172 because
10 “limited commercial airline service at [Palomar Airport] is . . . allowed by right under the
11 current CUP.” (*Id.* at 2-3.)

12 On January 27, 2025, C4FA filed a lawsuit challenging the County’s lease with American
13 Airlines and the County’s rescission of Policy F-44, which previously limited the size of aircraft
14 that could use Palomar Airport. (C4FA’s Verified Complaint for Declaratory Relief and Petition
15 for Writ of Mandate (“C4FA Petition”), January 27, 2025.) C4FA alleges that the County had
16 failed to comply with the California Environmental Quality Act (“CEQA”) and the terms of
17 CUP-172.² (C4FA Petition, ¶ 2.) On March 10, 2025, C4FA filed a motion for preliminary
18 injunction to halt operations under the American Airlines lease until the merits of the case could
19 be heard. (C4FA’s Opening Brief in Support of Motion for Preliminary Injunction, March 10,
20 2025.) This Court denied C4FA’s motion for preliminary injunction on April 4, 2025. (Minute
21 Order re Preliminary Injunction (“PI Order”), April 4, 2025.) The County filed a demurrer on
22 March 3, 2025, and an amended demurrer and motion to strike on April 3, 2025. (County’s
23 Amended Demurrer to Complaint and Motion to Strike, April 3, 2025.) This Court has set a
24 November 14, 2025 hearing for the demurrer and motion.

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² The City takes no position regarding C4FA’s CEQA claims.

1 **III. ARGUMENT**

2 **A. The City is Entitled to Intervene as a Matter of Right.**

3 Code of Civil Procedure section 387, subsection (d)(1)(B), provides that a nonparty may
4 intervene as a matter of right where: (1) the application is timely; (2) the nonparty claims an
5 interest relating to the property or transaction which is the subject of the action; (3) the nonparty
6 is so situated that the disposition of the action may impair the nonparty’s ability to protect its
7 interest; and (4) the nonparty’s interest is not adequately represented by existing parties to the
8 litigation. (CCP, § 387(d)(1); *King v. Pacific Gas & Electric Co.* (2022) 82 Cal.App.5th 440,
9 448-49.)

10 **1. The City’s Petition for Intervention Is Timely.**

11 Code of Civil Procedure section 387 does not set a time limit for filing a motion to
12 intervene. (*Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842.) Generally, “a
13 motion for leave to intervene before any substantive hearing on the merits has taken place is
14 timely.” (*Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250,
15 1277; *see also Allen v. California Water & Tel. Co.* (1947) 31 Cal.2d 104, 108 [“a right to
16 intervene should be asserted within a reasonable time”]; *Center for Biological Diversity v. U.S.*
17 *Dept of the Interior*, 640 F.Supp.3d 59, 67 (D.C. Dist. Ct. 2022) [intervention timely where
18 defendants had not yet filed answer to the complaint].)³ Intervention should be considered
19 timely unless a party opposing intervention can demonstrate prejudice from any delay. (*See*
20 *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 574-75 [intervention
21 timely “based solely on the absence” of prejudice caused by the movant’s delay]; *see also Truck*
22 *Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 345, 351 [four-year delay in
23 seeking intervention not untimely where no prejudice shown].)

24 The City’s intervention application is timely. C4FA initiated this case on January 27,
25 2025. Only four months have passed since the case commenced, and the litigation is still in the
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27 ³ *See Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 280-81
28 (Federal Rule of Civil Procedure 24 is “virtually identical” to California Code of Civil
Procedure section 387).

1 initial phase. Although the Court has decided C4FA's motion for preliminary injunction, the
2 Court did not decide the merits in denying C4FA's request. (PI Order at 1 ["[T]his ruling should
3 not be interpreted as a statement of decision . . . [or] an adjudication of the ultimate rights in
4 controversy."].) Additionally, the County and American Airlines have not yet answered C4FA's
5 complaint, and the Court has not heard the County's demurrer and motion to strike or held an
6 initial CMC. (*See Crestwood Behavioral Health*, 70 Cal.App.5th at 574-75 ["stage of the
7 proceeding at which an applicant seeks to intervene" a key factor in determining timeliness].)
8 Because the case is still in the early stages of litigation, the City's intervention request is timely.
9 Further, because the case has not yet advanced past this initial phase, the City's intervention will
10 not prejudice the current parties.

11 **2. The City Has a Right to Intervene in this Case.**

12 The City may intervene as a matter of right because (1) it has an interest the enforcement
13 of CUP-172 and the County's activities at Palomar Airport that are the subject of the action; (2)
14 disposition of C4FA's claims regarding the County's violations of CUP-172 may impair or
15 impede the City's ability to protect that interest and enforce CUP-172's terms; and (3) the City's
16 interests are not adequately represented by the existing parties. (CCP, § 387(d)(1)(B).)

17 **a. The City Has an Interest in the County's Compliance with CUP-172.**

18 The City has unique interests in enforcement of and compliance with CUP-172. Palomar
19 Airport is located within the City, which annexed the Airport in 1978. (C4FA PI Exhibits, Vol.
20 1, Ex. 3 at 1 (LAFCO Annexation Decision).) As a condition of this annexation, the County
21 willingly agreed to waive its immunity and submit to the City's zoning authority under CUP-
22 172. (C4FA PI Exhibits, Vol. 1, Ex. 1, 2021 Judgment at 2.)

23 The CUP-172 required the County to seek an amendment to the CUP before entering into
24 a lease agreement with American Airlines, yet the County failed to do so. The County's failure
25 to adhere to the conditions set out in CUP-172 threatens to undermine the validity of the permit,
26 to weaken the City's ability to uphold its own zoning code through such conditional use permits,
27 and to allow for increased Airport activity beyond what the CUP authorizes. The City should be
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1 allowed to intervene to uphold the integrity of its permit. (*See Bello v. ABA Energy Corp.* (2004)
2 121 Cal.App.4th 301, 318 [“When construing the [permit] language of an administrative
3 agency,” courts “must defer to the interpretation of the [permitting] agency itself.”].)

4 Additionally, the City has an interest in ensuring that its zoning authority is given full
5 legal effect so that it can protect its citizens through permit enforcement. The City uses
6 conditional use permits to ensure that actions within a zoned district are consist with existing
7 zoning laws and compatible with the public welfare. (Carlsbad Municipal Code Ch. 21.42,
8 §21.42.010; *see also* Cal. Const., art. XI, § 7 [California cities have police power to enact and
9 enforce laws to protect public health, safety, and welfare].) “All public agencies have an
10 ‘interest’ which is ‘direct’ in meeting their official responsibilities.” (*Timberidge Enterprises,*
11 *Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 87, 82.) Here, the City has an interest in
12 upholding the requirements of a permit intended to protect the welfare of City’s residents living
13 near the Palomar Airport.

14 Finally, the City also has an interest in ensuring that the Court’s 2021 Judgment is given
15 full effect. The 2021 Judgment recognized existing limitations on uses of the Palomar Airport
16 under CUP-172. (C4FA PI Exhibits, Vol. 1, Ex. 1, 2021 Judgment at 2-3 [acknowledging that
17 allowing “larger aircraft to takeoff with more fuel . . . use[s] the Airport in a way that was not
18 previously authorized” under CUP-172].) This previous decision is highly relevant to the facts
19 of the current litigation and to the integrity of the City’s zoning authority.

20 **b. Disposition of this Case May Impair the City’s Ability to Protect**
21 **Its Interest.**

22 The City should be granted leave to intervene as a matter of right because the disposition
23 of this case may impair its interest in enforcing CUP-172. A final judgment from this Court
24 interpreting the terms and requirements of CUP-172 could undermine the City’s ability to
25 enforce the conditions included therein, and ultimately protect its residents from the negative
26 effects of unauthorized airport expansion.

27 **c. The City’s Interests Are Not Adequately Represented by the**
28 **Existing Parties.**

The City must be allowed to intervene to present its unique interests and perspectives on

1 the litigation issues. Because the City is the entity that issued CUP-172, it has a special interest
2 in compliance with the permit's conditions. Indeed, as the permitting authority, the City is
3 uniquely positioned to clarify the correct intent and interpretation of the permit language. (*See*
4 *Bello*, 121 Cal.App.4th at 318 [courts give deference to agency's interpretation of its own
5 language].)

6 Moreover, the City's interest in CUP-172's interpretation and enforcement is distinct
7 from C4FA's. Although a public interest group and a public entity may share the same "ultimate
8 objective," they may nonetheless have different interests. (*California Dump Truck Owners Assn.*
9 *v. Nichols* (E.D. Cal. 2011) 275 F.R.D. 303, 308 [public agency must balance "the interests of
10 various constituencies" and "the economy of the state" that could be at odds with public interest
11 group].) C4FA's interests in the lawsuit arise from a desire to rescind the lease and halt
12 American Airlines' operations at the Palomar Airport. In contrast, the City's interest centers on
13 ensuring that its police power as the permitting entity is upheld so it can provide for the safety
14 and wellbeing of its residents.

15 For these reasons, none of the parties adequately represent the City's interests and the
16 City should be allowed to intervene.

17 **B. The Court Should Permit the City to Intervene.**

18 Even if the City were not entitled to intervene as of right, the Court should exercise its
19 discretion to allow the City's intervention. A court may permit a nonparty to intervene where:
20 (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate
21 interest in the lawsuit or the success of either of the parties, or an interest against both; (3) the
22 intervention will not enlarge the issues raised by the original parties; and (4) the reasons for
23 intervention outweigh any opposition by the parties currently in the action. (*See State Water*
24 *Board Cases*, 97 Cal.App.5th at 1050; CCP, § 387(d)(2).) In considering these factors, Code of
25 Civil Procedure section 387 "should be liberally construed in favor of intervention." (*Simpson*
26 *Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.) The City readily meets
27 each of these requirements for permissive intervention.
28

1 **1. The City Followed the Proper Procedures.**

2 As described above in Section III(1), this application is timely filed under Code of Civil
3 Procedure section 387 and follows all the proper procedures.

4 **2. The City Has a Direct Interest in this Action.**

5 As discussed above in Section III(2)(a), the City has a direct interest in this litigation. A
6 “direct and immediate” interest in the outcome of the litigation refers to a substantial probability
7 that the City will gain or lose by direct operation of the judgment. (*Lindelli v. Town of San*
8 *Anselmo* (2006) 139 Cal.App.4th 1499, 1505.) Section III(2)(a), *supra*, describes how the City’s
9 interests could be harmed by a Court decision finding that the County’s current activities at the
10 Palomar Airport do not necessitate an amendment of CUP-172.

11 **3. The City’s Intervention Will Not Enlarge the Issues in the Litigation.**

12 The City is not seeking to enlarge the issues in this case. C4FA’s petition alleges that the
13 County violated (1) CEQA by failing to prepare an environmental impact report for the
14 American Airlines lease approval, and (2) Planning and Zoning law by violating CUP-172.
15 (C4FA Petition, ¶ 16.) C4FA brings these claims against the County, and against American
16 Airlines as the real party in interest. (*Id.*, ¶¶ 2-3.)

17 Here, the City has narrowly tailored its proposed complaint to a single claim: that the
18 County has violated CUP-172 and must seek an amendment to the permit to allow its current
19 activities. (*See* Attachment A: [Proposed] Complaint in Intervention for Declaratory and
20 Injunctive Relief, ¶¶ 37-43). The City’s proposed complaint only seeks relief against the
21 County. (*Id.* at ¶¶ 54-55.) The City’s focused approach to this case will not enlarge the issues
22 that the Court must resolve.

23 **4. The City’s Reasons for Intervention Outweigh Any Opposition by the**
24 **Parties Currently in the Action.**

25 Finally, the City’s interest in the enforcement of its own permit outweigh any opposition
26 the current parties may have. As discussed in Section III(1), the litigation is still in the initial
27 phase and City’s presence in the case would not prejudice the current parties. The City has a
28 unique interest in enforcing its zoning laws through CUP-172 and provides a singular

1 perspective on the requirements of the CUP as the permitting authority.

2 Additionally, allowing the City to intervene in this case to represent these interests will
3 promote judicial economy by avoiding the time and expense of having to address the City's
4 claim in a separate action. For all these reasons, permissive intervention, which should be
5 liberally granted (*Simpson Redwood Co.*, 196 Cal.App.3d at 1200), is warranted here.

6 **C. Ex Parte Relief Is Appropriate.**

7 Code of Civil Procedure section 387 expressly authorizes a petition for leave to intervene
8 via "ex parte application." (CCP, § 387(c).) Additionally, even without that express
9 authorization, ex parte relief would be appropriate because the City will suffer prejudice if
10 required to proceed under a regularly noticed motion. The earliest available hearing date for
11 such a motion is not until December 2025, which falls after the November 14, 2025 CMC and
12 hearing on the County's demurrer and motion to strike. (Gibbons Dec., ¶ 4.) Absent ex parte
13 relief, the City will not be present at the CMC to discuss procedures for adjudicating the merits,
14 or at the hearing on the County's demurrer and motion to strike to address issues concerning
15 interpretation of CUP-172 and this Court's 2021 Judgment. This potential prejudice justifies
16 granting the City's ex parte application.

17 The City has satisfied the procedural requirements for ex parte relief. This application
18 includes the requisite declaration showing harm under California Rules of Court, rules 3.1201
19 and 3.1202, and confirming that the City notified all parties of the City's intent to proceed with
20 an ex parte petition for leave to intervene, as required by rules 3.1203(a) and 3.1204. (Gibbons
21 Dec., ¶ 10.)

22 **IV. CONCLUSION**

23 For all the reasons discussed above, the City respectfully requests that the Court grant
24 this application for leave to intervene in the action as a plaintiff.

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1 DATED: May 23, 2025

SHUTE, MIHALY & WEINBERGER LLP

Tori Ballif Gibbons

By: _____

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ATTACHMENT A

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CITY OF CARLSBAD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Case No. 25-CU-0004719C

**[PROPOSED] COMPLAINT IN
INTERVENTION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Code Civ. Proc. §§ 387, 525, 1060

INTRODUCTION

1
2 1. This action challenges the County of San Diego’s (“County” or “Defendant”) expansion of commercial operations at the McClellan-Palomar Airport (“Airport”) without first seeking an amendment to its Conditional Use Permit No. 172 (“CUP-172”) from the City of Carlsbad (“City”).

6 2. CUP-172 limits uses of the Airport to those expressly listed in the Permit, and further requires that a CUP amendment is necessary to change the Airport’s designation with respect to the types and sizes of aircraft that utilize the Airport. For this reason, in 2021, following litigation challenging the County’s master plan update for the Airport, a San Diego Superior Court Judge ruled that the County must obtain a CUP amendment before the Airport can change its current B-II designation to a higher of level of operations (“2021 Judgment”). That same year, the County acknowledged this requirement, and promised in its revised master plan update to seek an amendment to CUP-172 before changing the existing B-II designation to something greater (i.e., B-III or higher).

15 3. Yet the County has not followed through on this requirement. Four years have passed since the 2021 Judgment, and the County still has not sought an amendment to CUP-172 from the City. Instead, the County has increasingly allowed Airport operations with larger aircraft while continuing to insist that it is running a B-II airport. Recent approval of a commercial lease with American Airlines to fly larger commercial jets and rescission of a County policy limiting aircraft size are the latest actions that demonstrate the County’s commitment and intention to operate a de facto C/D-III Airport in violation of CUP-172 and the 2021 Judgment. Additionally, the County submitted a future Airport Layout Plan (“ALP”) for the ultimate D-III airport design standard to the Federal Aviation Administration (“FAA”) for approval, which is necessary for airfield planning, funding, and development. The City also alleges on information and belief that the ALP for the ultimate D-III Airport design was also submitted to the San Diego Regional Airport Authority (“SDRAA”) serving as the region’s Airport Land Use Commission. The County should have completed the process of amending CUP-172 prior to

1 submitting the ALP to the FAA/SDRAA. Postponing the amendment process until after
2 FAA/SDRAA approval improperly circumvents the 2021 Judgment and the terms of CUP-172.

3 4. This Court should issue a declaration stating that the County is operating the
4 Airport beyond the permitted aircraft types and frequencies allowed under CUP-172 and is
5 required to seek an amendment to CUP-172 from the City. This Court should also issue an
6 injunction compelling the County to seek an amendment to CUP-172, consistent with prior
7 City/County approvals and the 2021 Judgment.

8 **PARTIES**

9 5. The City is informed and believes that Plaintiff and Petitioner CITIZENS FOR A
10 FRIENDLY AIRPORT (“C4FA”) is a nonprofit organization formed and operating under the
11 laws of the State of California, and has an interest in protecting local air quality, minimizing and
12 ameliorating aircraft noise, ensuring informed and responsible growth, and promoting other
13 environment-related quality-of-life issues.

14 6. Defendant and Respondent COUNTY OF SAN DIEGO is, and at all times herein
15 mentioned was, a political subdivision of the State of California that owns and operates the
16 Airport. The County is the permittee under CUP-172 and responsible for complying with the
17 terms of the CUP.

18 7. Defendant and Real Parties in Interest AMERICAN AIRLINES, INC. (“RPI”) is
19 the applicant for the commercial airlines lease approval that is the subject of Plaintiff-Petitioner
20 C4FA’s claims.

21 8. The true names and capacities, whether individual, corporate, associate or
22 otherwise, of Defendants Roe 1 through 100, inclusive, are unknown to Plaintiff-Intervenor City
23 of Carlsbad at this time, and the City therefore sues said Defendants under fictional names. The
24 City alleges, upon information and belief, that each fictionally named Defendant is responsible
25 in some manner for committing the acts upon which the action is based. The City will seek to
26 amend its Complaint to show their true names and capacities if and when they have been
27 ascertained.

9. Plaintiff-Intervenor CITY OF CARLSBAD is, and at all times herein mentioned was, a City located in the County of San Diego, California. The Airport is located within the City boundaries and was annexed to the City in 1978. The City has the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs in the City, including the ability to specify code requirements for new or expanded airport land uses in the City's General Plan and Zoning Code. The City is responsible for the health and welfare of its residents, and has an interest in minimizing noise and other environmental impacts from the Airport to the greatest extent feasible.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the matters alleged in this action pursuant to California Code of Civil Procedure § 1060 *et seq.* because the City seeks a declaration from this Court regarding the County's noncompliance with CUP-172 and the need to seek an amendment. This Court further has jurisdiction over the matters alleged in this action pursuant to California Code of Civil Procedure § 525 because the City seeks an injunction to require the County to seek an amendment to CUP-172.

11. Venue for this action properly lies in the Central Division of the Superior Court for the State of California for the County of San Diego because the City seeks to intervene in Case No. 25-CU-004719C, which is already before San Diego Superior Court's Central Division.

12. The City has no plain, speedy, or adequate remedy in the course of ordinary law unless this Court grants the requested declaratory and injunctive relief to require the County to seek an amendment to CUP-172. In the absence of such remedies, Defendant will continue to operate the Airport at levels beyond what is allowed under the terms of CUP-172 in violation of the Permit and the 2021 Judgment.

13. This Complaint is timely filed.

1 **FACTUAL AND LEGAL BACKGROUND**

2 **Airport History and Conditional Use Permit**

3 14. The Palomar-McClellan Airport first began operations in 1959. The Airport,
4 which lies entirely within the municipal boundary of the City of Carlsbad, is owned and
5 operated by Defendant County of San Diego. Currently, the Airport serves a mix of general
6 aviation and corporate aircraft.

7 15. The Airport was annexed to the City on September 11, 1978. In order to comply
8 with the requirements of the City's Zoning Code, the Local Agency Formation Commission
9 ("LAFCO") required that an appropriate zoning designation be placed upon the Airport
10 property, and required the County to obtain a conditional use permit from the City. The County
11 and the City agreed with this procedure. *See* LAFCO Annexation Case No. CA77-50.

12 16. Accordingly, in 1980, the County applied for a conditional use permit to operate
13 the Airport. The City issued CUP No. 172 (CUP-172) in Resolution 1699 on September 24,
14 1980.

15 17. CUP-172 placed a number of conditions on the County's use and operation of the
16 Airport. CUP Condition 8, in particular, limits Airport operations to enumerated "permitted
17 uses" and provides that "[a]pproval of any uses not specifically listed . . . and/or expansion of
18 the airport facility shall require an amendment to the Conditional Use Permit." CUP Condition
19 11 provides that "[t]he existing designation of the airport as a General Aviation Basic Transport
20 Airport shall not change unless an amendment to this CUP is approved by the Planning
21 Commission." Basic Transport General Aviation Airports primarily allow for private,
22 emergency medical, firefighting, and mail delivery flights. This designation is distinct from a
23 Primary Commercial Airport, which serve public commercial flights typically accounting for
24 less than .05 percent, but more than 10,000 enplanements (passengers boarding a plane at a
25 given airport), of the total enplanements in the U.S. each year.

26 **Master Plan Update and Litigation**

27 18. In October 2018, the County approved a Master Plan Update ("2018 Update" or
28 "2018 MPU") for the Airport and certified an associated Programmatic Environmental Impact

1 Report purporting to study the Update’s environmental impact. Under the Master Plan Update,
2 the County considered the Airport’s potential aviation growth over the next 20 years using two
3 possible growth scenarios.

4 19. In discussing the Airport’s growth, the County also relied on the Federal Aviation
5 Administration’s (“FAA”) design standards for airports. These standards are based on the size
6 and speed of the “Critical Aircraft” that use a particular airport. FAA Advisory Circular (“AC”)
7 150/5300-13A at 5. The Critical Aircraft is “the most demanding aircraft type, or grouping of
8 aircraft with similar characteristics,” that have at least 500 annual operations at a given airport.
9 AC 150/5000-17 at 1-1. The Critical Aircraft is identified by an Airport Reference Code
10 (“ARC”) that considers the aircraft’s approach speed (A, B, C, D, & E) and wingspan or tail
11 height (I, II, III, IV, V & VI). Thus, an A-I aircraft would be much smaller and require a slower
12 landing speed than a D-IV aircraft. Critical Aircraft usage determines an airport’s design
13 designation using the same ARC system.

14 20. From the Airport’s annexation into the City through the 2018 MPU, the ARC
15 designation for the Airport was B-II. Anticipating growth that would shift the Critical Aircraft
16 designation above B-II, the 2018 Update focused on improvements to existing property that
17 would be consistent with a D-III airport classification, including an Engineered Material
18 Arresting System, runway extension, increased space between the runway and taxiway, and
19 revised Runway Protection Zones.

20 21. Less than a month later, Petitioner-Plaintiff C4FA sued the County for its alleged
21 failure to adequately analyze the 2018 Update’s environmental impacts under CEQA and for
22 improperly approving the Update without first seeking an amendment to CUP-172.¹ *Citizens for*
23 *a Friendly Airport v. County of San Diego*, San Diego Superior Court Case No. 37-2018-
24 00057624-CU-TT-CTL.

26 ¹ The City also filed a legal challenge against the County’s 2018 Master Plan Update and
27 associated approvals. In March 2019, the City and County reached a settlement, which included
28 dismissal of the City’s lawsuit. After the 2021 Judgment, the City and County terminated the
settlement agreement.

1 22. On January 26, 2021, Judge Gregory Pollack of this Court issued a final ruling in
2 the C4FA lawsuit. The Court held that the County had abused its discretion by failing to comply
3 with CEQA when it approved the 2018 MPU. The 2021 Judgment also addressed the
4 applicability of CUP-172 to the County. The Court first found that the County had waived its
5 intergovernmental immunities (Government Code §§ 53090, 53901) from City zoning with
6 respect to CUP-172 and was therefore bound by the CUP’s terms.

7 23. The 2021 Judgment further construed CUP-172 to prohibit the County from
8 changing the Airport’s FAA Airport Reference Code designation from “B-II” to a higher
9 designation like “D-III” without first obtaining an amendment to CUP-172 from the City. The
10 Court noted that a change from a B-II to a higher designation would “allow larger aircraft to
11 takeoff with more fuel,” which evidenced “an intent to use the Airport in a way that was not
12 previously authorized” by CUP-172. 2021 Judgment at 2-3.

13 24. The Court then issued judgment for C4FA and a writ of mandate directing the
14 County to rescind approval of the 2018 MPU and the County’s certification of its environmental
15 review.

16 25. In December 2021, the County approved a modified Master Plan Update (“2021
17 Update” or “2021 MPU”) and certified a revised Programmatic Environmental Impact Report in
18 response to the 2021 Judgment. The revised environmental review included a supplementary
19 noise analysis that considered noise impacts for specific geographic locations referenced in
20 public comment as having significant noise levels. The County Board of Supervisors’ approval
21 included selection of the B-II Enhanced Facility Airport design standard now and a D-III
22 Modified Standards Compliance Airport design in the future, “conditioned on addressing the
23 [CUP] requirement.”

24 26. The County’s 2021 MPU also stated the County’s intention to “seek an
25 amendment to CUP-172 for any change in the existing Airport Reference Cod[sic] (ARC) as
26 shown on an [Airport Layout Plan] from B-II to something greater (i.e., B-III or higher). The
27 County will also seek a use permit amendment prior to seeking grant funds, awarding a contract,
28

1 or taking other action to implement facility improvements needed to implement an ultimate
2 ARC greater than B-II.”

3 **County Efforts to Change Airport Designation**

4 27. As early as March 3, 2021, the County submitted an ALP Update for FAA
5 approval. The draft ALP included three Airport Layout Drawings: (1) one showing the existing
6 B-II airport layout; (2) a second showing the future B-II airport layout with a small runway
7 extension of 200 feet and installation of an Engineered Materials Arresting System (“EMAS”);
8 and (3) a third showing the ultimate D-III airport layout with a runway extension of 800 feet, a
9 shift in the runway location, and EMAS installation on both runway ends. The existing and
10 future B-II airport layout drawings listed the Falcon 2000 as the Critical Aircraft. The Falcon
11 2000 has an ARC designation of B-II. The D-III airport layout draft listed a Gulfstream G650 as
12 the Critical Aircraft. The Gulfstream G650 has an ARC designation of D-III.

13 28. The Airport Layout Drawing for the ultimate D-III airport layout also stated that
14 “the County will seek an amendment to [CUP-172] with the City of Carlsbad.”

15 29. Over the next three years, the FAA provided the County with several rounds of
16 comments and review on the draft ALP, including comments regarding the design of the D-III
17 ultimate airport layout.

18 30. On July 10, 2024, the County’s Director of Airports, Jamie Abbott, sent an
19 electronic message to Cathryn Cason at the FAA in which it was noted that “[c]urrently, [the
20 County is] in the process of obtaining a [Letter of Agreement] from the [FAA’s Air Traffic
21 Organization] for C-III or greater operations at [the Airport].” That same day, the FAA issued a
22 Conditional Approval of the County’s ALP drawing set, which included drawings depicting an
23 ultimate D-III designation for the Airport. The FAA conditioned approval on acceptance of the
24 plan under local land use laws, which include the City’s Zoning Code and CUP-172. Indeed,
25 February 2024 electronic correspondence from FAA staff to the County emphasized that the
26 County would need to resolve the issue of amending CUP-172 before the FAA could fully
27 approve the ALP.

Lease with American Airlines

31. On January 8, 2025, the County approved a lease to American Airlines to allow the company to begin commercial service at the Airport using the 76-seat Embraer 175 passenger jet (the “Lease”). The Embraer 175 is a dual-engine jet with an ARC designation of C-III. At the time of the Lease, the County described the Airport’s current ARC designation as B-II.

32. The Lease would allow American Airlines to operate commercial passenger flights at the Airport’s facilities twice a day for two years. The Lease proposes 1,460 aircraft operations per year (4 flights per day x 365 days) and approximately 55,480 enplanements per year. These annual operations of a C-III aircraft are nearly triple the 500 annual operations needed to establish regular use by a Critical Aircraft, and which could support changing Palomar Airport’s ARC designation. *See* AC 150/5000-17.

33. In the same action, the County rescinded its Policy F-44 that had previously capped commercial aircraft using the Airport at a maximum of 70 seats. In response to concerns from the City and C4FA that this rescission would open the door to additional large commercial aircraft and further violation of CUP-172, the County claimed that Policy F-44 had already been superseded by its 2021 Master Plan Update.

34. The County conducted an “initial study” environmental analysis and determined that the potential environmental impacts of approving the Lease and rescinding the policy were already addressed in its 2021 programmatic environmental review and, thus, no further environmental review was necessary.

35. Despite the 2021 Judgment and the repeated correspondence from the City and C4FA detailing the need for an amendment to CUP-172, the County took the position in its minute orders approving the Lease that no amendment to CUP-172 was needed because “limited commercial airline service at [the Airport] is consistent with the facilities and uses allowed by right under the current CUP.”

36. On January 27, 2025, C4FA filed a lawsuit challenging the County’s Lease and rescission of Policy F-44 for failure to comply with CEQA and for violations of Planning and

1 Zoning Law in failing to comply with CUP-172. *Citizens for a Friendly Airport v. County of*
2 *San Diego*, San Diego Superior Court Case No. 25-CU-004719C.

3 **FIRST CAUSE OF ACTION AGAINST DEFENDANT COUNTY**

4 **(Declaratory Relief, Code Civ. Proc. § 1060; Injunctive Relief, Code Civ. Proc. § 525)**

5 37. The City hereby realleges and incorporates the allegations contained in preceding
6 paragraphs in their entirety.

7 38. CUP-172 sets out the conditions under which the County may operate the Airport.
8 The permitted uses for the Airport are limited to those expressly listed in Table 1. CUP-172
9 requires that approval of any uses not specifically listed in Table 1 or expansion of the Airport
10 facility shall require an amendment to CUP-172.

11 39. CUP-172 further states that a change in the existing designation of the Airport as a
12 General Aviation Basic Transport Airport also requires an amendment. CUP-172 prohibits the
13 County from changing the Airport’s FAA ARC designation from “B-II” to a higher designation
14 without first obtaining an amendment to CUP-172 from the City, as the 2021 Judgment
15 affirmed.

16 40. The County repeatedly asserted that it would pursue an amendment to CUP-172
17 before making changes to the Airport’s ARC designation, yet has not done so.

18 41. The County has violated CUP-172 by operating the Airport as a de facto C- or D-
19 III Airport by “allow[ing] larger aircraft to takeoff with more fuel” with increasing frequency.
20 *See* 2021 Judgment. As this Court recognized, allowing larger C/D-III commercial planes to
21 operate at the Airport in greater numbers demonstrates “an intent to use the Airport in a way that
22 was not previously authorized” under CUP-172. *Id.* Examples of the County’s commitment and
23 intention to constructively operate the Airport at levels higher than B-II without obtaining an
24 amendment to CUP-172 include, but are not limited to, the following:

25 a. The County submitted a proposed Airport Layout Plan to the FAA and,
26 upon information and belief, to the SDRAA that included a D-III Critical Aircraft and a D-III
27 airport layout design. The ALP acknowledges that this D-III designation is the County’s
28 “ultimate” goal.

1 b. The FAA has conditionally approved the County’s ALP, including the D-
2 III airport layout design

3 c. The City is informed and believes, and on this basis alleges, that the
4 SDRAA is currently processing the MPU’s ALP, which will necessitate preparation and
5 adoption of a new Airport Land Use Compatibility Plan (“ALUCP”). The ALUCP is the basis
6 for compatible planning within the vicinity of a public airport. The ALUCP may include
7 measures specifying land use, height restrictions, and building standards.

8 d. The County has entered a lease with American Airlines that would allow
9 for annual operations of C-III aircraft in excess of the 500 annual flight threshold for a Critical
10 Aircraft designation. Given that an airport’s design layout and ARC designation are determined
11 by its Critical Aircraft, this influx of C/D-III aircraft at the Airport evidences the County’s
12 commitment and intent to change the types of aircraft operating at the Airport and their
13 frequency beyond what is contemplated in CUP-172.

14 e. The County’s December 11, 2024 and January 8, 2025 minute orders
15 regarding the Lease assert that the existing commercial operations are “uses allowed by right
16 under the current CUP.”

17 f. The County rescinded its Policy F-44, which previously limited commercial
18 aircraft using the Airport to a maximum of 70 seats. This rescission paves the way for
19 increasingly larger commercial aircraft to operate at the Airport.

20 42. The County’s attempts to constructively operate a C/D-III Airport without first
21 seeking the requisite amendment from the City violate the mandatory conditions in CUP-172.

22 43. An actual controversy has arisen and now exists between the City and the County
23 concerning the County’s obligations and duties under CUP-172. As set forth more fully above,
24 the City contends that the County must seek and obtain an amendment to CUP-172 from the
25 City for the existing commercial operations at the Airport. The City is informed and believes,
26 and on that basis alleges, that the County contends in all respects to the contrary. A judicial
27 determination and declaration as to the legal obligations of the County is therefore necessary and
28 appropriate to determine the duties of the County and the rights of the City.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the City prays for judgment as follows:

3 44. For a declaratory judgment or other appropriate order declaring that the County
4 must seek an amendment to CUP-172 from the City;

5 45. For a mandatory injunction compelling the County to seek an amendment to CUP-
6 172 from the City;

7 46. For costs of the suit;

8 47. For any and all legal fees and other expenses incurred by the City in connection
9 with this lawsuit, including but not limited to reasonable attorney fees; and

10 48. For other and future relief as the Court deems just and proper.
11

12 DATED: May 23, 2025

SHUTE, MIHALY & WEINBERGER LLP

13
14 By: _____

15 EDWARD T. SCHEXNAYDER

16 Attorneys for CITY OF CARLSBAD
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