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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15 CITIZENS FOR A FRIENDLY
AIRPORT,
16
17 Plaintiff and Petitioner,
18
19 v.
20 COUNTY OF SAN DIEGO; and DOES 1
through 100,
21 Defendants and Respondents,

22 AMERICAN AIRLINES, INC.; and DOES
101 through 1000,
23 Defendants and Real Parties
In Interest,

24 CITY OF CARLSBAD,
25 Plaintiff-Intervenor.
26
27
28

Case No. 25-CU-0004719C

**COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Code Civ. Proc. §§ 387, 525, 1060

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

Action Filed: January 27, 2025

1 **INTRODUCTION**

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

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

15 3. Yet the County has not followed through on this requirement. Four years have
16 passed since the 2021 Judgment, and the County still has not sought an amendment to CUP-172
17 from the City. Instead, the County has increasingly allowed Airport operations with larger
18 aircraft while continuing to insist that it is running a B-II airport. Recent approval of a
19 commercial lease with American Airlines to fly larger commercial jets and rescission of a County
20 policy limiting aircraft size are the latest actions that demonstrate the County’s commitment and
21 intention to operate a de facto C/D-III Airport in violation of CUP-172 and the 2021 Judgment.
22 Additionally, the County submitted a future Airport Layout Plan (“ALP”) for the ultimate D-III
23 airport design standard to the Federal Aviation Administration (“FAA”) for approval, which is
24 necessary for airfield planning, funding, and development. The City also alleges on information
25 and belief that the ALP for the ultimate D-III Airport design was also submitted to the San
26 Diego Regional Airport Authority (“SDRAA”) serving as the region’s Airport Land Use
27 Commission. The County should have completed the process of amending CUP-172 prior to
28

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.

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.

25
26
27 ¹ The City also filed a legal challenge against the County’s 2018 Master Plan Update and
28 associated approvals. In March 2019, the City and County reached a settlement, which included
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.

1 **Lease with American Airlines**

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

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

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

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

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

27 36. On January 27, 2025, C4FA filed a lawsuit challenging the County’s Lease and
28 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 DATED: November 14, 2025

SHUTE, MIHALY & WEINBERGER LLP

12
13 By: 
14 _____
EDWARD T. SCHEXNAYDER

15 Attorneys for Intervenor
16 CITY OF CARLSBAD
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1 **PROOF OF SERVICE**

2 ***CITIZENS FOR A FRIENDLY AIRPORT v. COUNTY OF SAN DIEGO et al.***
3 **Case No. 25-CU-004719C**
4 **San Diego County Superior Court**

5 At the time of service, I was over 18 years of age and **not a party to this action**. I am
6 employed in the County of San Francisco, State of California. My business address is 396 Hayes
7 Street, San Francisco, CA 94102.

8 On November 14, 2025, I served true copies of the following document(s) described as:

9 **COMPLAINT IN INTERVENTION FOR DECLARATORY AND INJUNCTIVE**
10 **RELIEF**

11 on the parties in this action as follows:

12 **SEE ATTACHED SERVICE LIST**

13 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
14 document(s) to be sent from e-mail address Larkin@smwlaw.com to the persons at the e-mail
15 addresses listed in the Service List. I did not receive, within a reasonable time after the
16 transmission, any electronic message or other indication that the transmission was unsuccessful.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on November 14, 2025, at San Francisco, California.

20 _____
21 Patricia Larkin
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1 SERVICE LIST

2 ***CITIZENS FOR A FRIENDLY AIRPORT v. COUNTY OF SAN DIEGO et al.***
3 **Case No. 25-CU-004719C**
4 **San Diego County Superior Court**

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