

## UPDATED – Settlement Reached in Santa Monica Airport Disputes

**02.03.17**

On Saturday, January 28, 2017, the City of Santa Monica (City) and the FAA announced an historic Consent Decree that resolves decades of litigation and controversy over the future of controversy regarding the future of Santa Monica Airport (SMO), as well as several ongoing lawsuits and Part 16 proceedings. The Decree explicitly allows the City to reduce the Airport's runway by almost one-third of its length in the immediate future and to close the Airport entirely after 2028.

The key elements of the Consent Decree are:

- The City may close SMO permanently after December 31, 2028, unless the City enters into a new grant agreement with the FAA before then.
- The City may immediately reduce the operational length of SMO's runway from 4,973 feet to 3,500 feet, after following the notice procedures in 14 C.F.R. § 157(b) and any applicable state or federal environmental laws, at the City's expense.
- After reducing the runway length, the City may use the land no longer needed for the runway for non-aeronautical purposes "that are safe and compatible with the operation" of SMO. That land must be subject to an aviation easement in agreed upon form.
- The City may establish its own proprietary exclusive fixed-based operation (FBO) after reducing the runway length. The FBO must be operated in accordance with Assurance 22(ii).
- The FAA releases SMO from all deed restrictions, including Surplus Property Act restrictions.
- The City must comply with Grant Assurances 19, 22, 23, 24, 25, and 30 through 2028, but the Consent Decree is silent regarding any other grant assurances that presumably no longer apply.
- The Consent Decree will be entered in the pending quiet title action in federal court, subject to the Court's approval. The Consent Decree would be judicially enforceable by the Parties through December 31, 2028. The Parties reserve the ability to resume litigation if the Court does not enter an acceptable Consent Decree.
- The FAA and the City will settle and release all actions between them, including Part 16 actions brought by the FAA. The FAA will send an agreed-upon letter to private Part 16 complainants urging them to withdraw claims.
- The City must offer leases to current and future aeronautical users using a specified form lease. The Consent Decree specifies minimum duration of leases and notice of termination provisions, among other conditions.
- The City may seek an "enhanced curfew" in addition to the current SMO curfew but must comply with ANCA (14 C.F.R. Part 161).
- The FAA agrees to consider proposals for a demonstration project for the use of unleaded aviation fuel, but the City cannot restrict the sale of leaded aviation fuel as long as FAA authorizes the use of leaded aviation fuels.
- The Consent Decree states that it reflects unique legal and factual circumstances and does not set any precedent for future FAA action.

The full text of the Consent Decree is available [here](#).

The Consent Decree ends decades of litigation and controversy over noise and other environmental impacts from SMO operations. The current litigation focused on two issues:



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1. **Expiration of Grant Assurances.** Pursuant to a 1984 Settlement Agreement with the FAA, the City believed it had the right to close SMO in 2015, consistent with the City's belief that its final grant agreement with the FAA expired in 2014. The FAA, however, contended that the 1984 Agreement did not allow the City to close SMO. In 2016, FAA also determined that the City's final grant agreement was extended to 2023 as the result of a 2003 grant amendment that increased the grant amount to reflect final construction costs. The City appealed FAA's decision to the U.S. Court of Appeals for the Ninth Circuit. In that litigation, Kaplan Kirsch & Rockwell drafted an amicus curiae brief on behalf of ACI-NA urging the Court to reverse the FAA's decision on the ground that routine grant amendments should not be understood to extend the duration of a grant.
2. **Surplus Property Act.** In addition, the City filed a separate suit in federal court challenging FAA's position that the City was obligated by the terms of a 1948 Instrument of Transfer releasing a portion of SMO from a wartime lease to keep SMO open indefinitely. The District Court had dismissed the case on statute of limitations grounds. On appeal, the Ninth Circuit reversed that decision in an opinion that also cast doubt on the substance of FAA's position. That case is awaiting trial in the District Court.

While the City and the FAA were litigating those issues, the City began to take steps to exercise greater control over the airfield in apparent preparation for closure. Among other things, the City began refusing to extend or renew a number of aeronautical leases and sought to establish a proprietary exclusive FBO operation, displacing an existing FBO. Those efforts caused the FAA and a number of airport users to file Part 16 complaints alleging various violations of FAA grant assurances. Additional controversy and litigation appeared to be looming as at least one entity planned to start a scheduled charter service at SMO using jet aircraft without seeking any City approval or permission.

The Consent Decree is extraordinary in that it attempts to resolve all of these controversies. Although the FAA has previously entered into—or supported—settlement agreements that included operational restrictions or limits on future growth, the Consent Decree appears to be unprecedented in that it allows for the City to shorten an existing runway in order to limit the types of aircraft that use SMO and expressly agrees to the complete closure of the Airport on a date certain. Moreover, the Consent Decree is a change from the FAA's long-standing position, echoed by aviation interests, that SMO is vital to the Los Angeles region and to preserving the aviation capacity of the Los Angeles Basin. For example, in earlier litigation, in which the City was represented by Kaplan Kirsch & Rockwell, the FAA vigorously opposed the City's efforts to prohibit operations by Approach Category C & D aircraft (due to sub-standard runway safety areas) in order to preserve SMO's capacity. In contrast, shortening the runway to 3,500 feet will effectively exclude much of the large jet traffic at SMO, making SMO a general aviation airport largely for recreational pilots. Although the Consent Decree was hailed in Santa Monica, aviation groups such as AOPA and NBAA expressed disappointment and vowed to fight SMO's closure.

Although we were not privy to the confidential settlement talks that led to the current Consent Decree, it appears that the FAA believed the litigation risks justified the Consent Decree, which keeps SMO open, at least partly, through 2028 and maintains FAA oversight through several key grant assurances. Had the City prevailed in the litigation, it could have closed SMO immediately.

The unique history and legal context makes it unlikely that the Santa Monica settlement will have much precedential value for other communities, which is underscored by the language in the Consent Decree expressly limiting it to the unique circumstances of the Santa Monica controversy.

Please contact Eric Pilsk or Peter Kirsch for more information.