[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL BUSINESS AVIATION ASSOCIATION, INC.; SANTA MONICA AIRPORT ASSOCIATION, INC.; BILL'S AIR CENTER, INC.; KIM DAVIDSON AVIATION, INC.; REDGATE PARTNERS, LLC; WONDERFUL CITRUS LLC,

Petitioners,

v.

MICHAEL P. HUERTA, Administrator, and FEDERAL AVIATION ADMINISTRATION,

Respondents.

No. 17-1054

CONSOLIDATED (1) REPLY IN SUPPORT OF MOTION TO DISMISS AND (2) OPPOSITION TO MOTION FOR STAY

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INTRODUCTION AND SUMMARY

The City of Santa Monica owns the land on which the Santa Monica Municipal Airport is located. The City's historical obligation to maintain the property as an airport derived from two sources: (1) conditions on federal funds that the City received for airport improvement, and (2) restrictions in a 1948 Instrument of Transfer under which the United States transferred certain leaseholds to the City after World War II. In litigation that, until recently, was pending before and within the Ninth Circuit, the City argued that its grant obligations had expired in 2014, and that it had clear title to all of the airport land because the restrictions in the 1948 Instrument of Transfer had expired in the 1950s. *See* Opening Br., *City of Santa Monica v. FAA*, No. 16-72827 (9th Cir. Dec. 16, 2016) (arguing that the grant obligations expired in 2014); *City of Santa Monica v. United States*, 650 F. App'x 326 (9th Cir. 2016) (remanding to the district court for an evidentiary hearing on the City's Quiet Title Act suit concerning the 1948 Instrument of Transfer).

On January 30, 2017, the City and the United States stipulated to the entry of a Consent Decree that resolved these disputes. Petitioners' Exhibits To Response And Motion For A Stay (Ex.) 2.[1] That stipulation was in accord with a settlement agreement between the City and the United States executed the same day, which

[1] "Ex." page numbers refer to the red numbers that this Court assigned to petitioners' Exhibits to their Response And Motion For A Stay, filed in this case on March 6, 2017.

required the parties to seek entry of the Consent Decree but specified that the settlement would be of "no force and effect" if the district court declined to enter the decree. Ex. 10. On February 1, the Consent Decree was entered by the District Court for the Central District of California, which had jurisdiction over the City's Quiet Title Act suit. *See* Ex. 197. As relevant here, the Consent Decree allows the City to shorten its 4,973-foot runway to 3,500 feet, but otherwise requires the City to maintain airport operations through the end of 2028, at which point the City may close the airport entirely. Ex. 201-04. As petitioners note, a shorter runway will substantially reduce jet traffic because larger jets will be unable to operate safely on a 3,500-foot runway. *See* Pet. Mot. 20-21. But, by requiring the City to maintain airport operations through 2028, the Consent Decree ensures that the airport will be available for the next twelve years to the smaller jets and propeller aircraft that comprise the overwhelming majority of current operations.[2]

Petitioners filed a petition for review in this Court that purports to seek review of the settlement agreement. They now ask the Court to enjoin the Federal Aviation Administration (FAA) from implementing the settlement agreement, and they further declare it "essential that a stay apply not only to FAA but also the City (and, to the extent necessary, that this Court's action be framed as an *injunction* vis-à-vis the City)."

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[2] Petitioners note that in 2016, there were approximately 88,000 operations at Santa Monica Airport, more than 17,000 of which involved jets. Mot. 4. But as petitioners acknowledge, smaller jets generally will not be affected by the shortening of the runway. *Id.* at 20-21.

Mot. 31. They argue that the All Writs Act allows this Court to enjoin the City from shortening its runway. *Id.* at 32.

Petitioners' filing confirms that their petition for review should be dismissed for lack of a reviewable FAA order. As discussed in our motion to dismiss, the settlement agreement had no operative effect unless and until it was entered as a Consent Decree. Accordingly, it did not determine rights or obligations and is not a final order of the FAA reviewable under 49 U.S.C. § 46110. Petitioners do not ask this Court to set aside the Consent Decree, and they implicitly concede that this Court would lack jurisdiction to do so. Thus, regardless of the disposition of their petition for review, the Consent Decree will remain in effect and binding on the signatories. Moreover, petitioners admit they cannot obtain meaningful relief in this Court without an injunction that prohibits the City from shortening its runway and, as explained below, there is no basis for such an injunction.

Because the petition for review should be dismissed, petitioners' request for a stay and injunction is moot. Moreover, petitioners fail to demonstrate any basis for a stay or injunction. Their various procedural objections to the settlement all rest on the incorrect premise that the agreement released uncontested obligations requiring the City to maintain the airport. In reality, the settlement resolved litigation in which the very existence of such obligations was in dispute. Petitioners' motion simply assumes that, absent the settlement, the City would be under a current obligation to maintain the operation of its airport. But the City vigorously contested the existence

of such obligations in the Ninth Circuit litigation. Petitioners do not even acknowledge the City's legal arguments, much less demonstrate that the Ninth Circuit would have rejected them. And, even apart from this overarching flaw in petitioners' claims, the procedural objections to the settlement fail on their own terms.

The balance of harms and the public interest also preclude an injunction. Petitioners ask this Court to enjoin the implementation of the settlement. But the settlement advanced "the interest of the public and civil aviation," Ex. 200, by ensuring the continuation of significant airport operations for the next twelve years, and by averting the massive disruption to aviation that could have been caused by an abrupt cessation of all airport operations. That major benefit to civil aviation dwarfs the harms identified in petitioners' declarations, which state that shortening the runway as permitted under the settlement will add about an hour to the commute of certain employees, who will have to fly in and out of Van Nuys Airport instead of the more conveniently located Santa Monica Airport. Ex. 441, 444.

STATEMENT

Although the City of Santa Monica owns the land on which the Santa Monica Airport is located, two independent sources required the City to maintain the property as an airport. The duration of those obligations was contested in litigation before the Ninth Circuit, where the City argued that those obligations had expired and that the City thus had unfettered authority to close the Santa Monica Airport at any time.

A. Ninth Circuit Litigation Regarding the Duration of the City's Grant Obligations

In 1994, the City accepted a $1.6 million grant from the FAA for airport improvements. Ex. 199. The grant agreement provided that the City was obligated to maintain the airport for a period "not to exceed twenty (20) years from the date of the acceptance of a grant offer"—that is, until 2014. *See* Excerpts of Record, Vol. 2, at 83, *City of Santa Monica,* No. 16-72827 (9th Cir. Dec. 16, 2016) (2 ER). In 2003, the FAA and the City executed a document titled "Amendment No. 2 to Grant Agreement," which increased the grant by approximately $240,000 and provided that "[a]ll other terms and conditions of the Grant Agreement remain in full force and effect." Ex. 199; *see also* 2 ER at 99.

In response to the City's efforts to close the airport, airport tenants filed an administrative complaint with the FAA, pursuant to 14 C.F.R. Part 16, seeking a ruling that the 2003 amendment restarted the twenty-year period in the original 1994 grant agreement. The tenants argued that the City's grant obligations thus would remain in effect until 2023. The FAA adopted the tenants' position. *See* Final Agency Decision and Order, *National Bus. Aviation Ass'n v. City of Santa Monica*, FAA No. 16-14-04 (Aug. 15, 2016), https://go.usa.gov/xXkna.

The City filed a petition for review of the final FAA order in the Ninth Circuit. In its opening brief, the City emphasized that the 2003 grant amendment provided that the "terms of the 1994 Grant Agreement would remain in effect" and argued that

this language "forecloses any contention that the amendment also silently encompassed a nine-year grant assurance extension." Opening Br. 16, *City of Santa Monica,* No. 16-72827 (9th Cir. Dec. 16, 2016). The City also argued that "[u]nrebutted evidence demonstrated that the City did not understand the amendment to change the 2014 expiration of the grant assurances," *id.*, and that the FAA's own actions—including in a 2003 report to Congress—proved that the FAA too had understood the 2003 amendment "as an ordinary amendment to a preexisting grant," rather than a new grant imposing a new 20-year obligation, *id.* at 28.

The Ninth Circuit extended the due date for the FAA's responsive brief to March 20, 2017. *See* Order, *City of Santa Monica*, No. 16-72827 (9th Cir. Dec. 20, 2016). After the Consent Decree was entered on February 1, 2017, the City voluntarily dismissed its petition for review as required by the decree. *See* Ex. 200; Order, *City of Santa Monica,* No. 16-72827 (9th Cir. Feb. 13, 2017) (order dismissing the petition for review).

B. Ninth Circuit Litigation Regarding the Duration of Restrictions in the 1948 Instrument of Transfer

The Santa Monica Airport is located on two parcels of property. Ex. 198. The runway occupies land in both of the parcels. *Id.* One parcel consists of approximately eighteen acres of land that the United States conveyed to the City in 1949 by quitclaim deed. *Id.*

The other parcel consists of approximately 168 acres of land. When the United States entered World War II, the City leased that land to the United States. *See City of Santa Monica v. United States*, 650 F. App'x 326, 327 (9th Cir. 2016). There is no dispute that the City owned the land in fee simple at the time the leases were executed. *Id.* After the war ended, in 1948, the United States transferred its leasehold interests to the City pursuant to the Surplus Property Act of 1944. The 1948 Instrument of Transfer provided that "the land, buildings, structures, improvements and equipment in which this instrument transfers any interest" must be used for airport purposes. *Id.* at 327 (emphasis omitted); *see also* Ex. 199.

In 2013, the City filed suit against the United States under the Quiet Title Act, seeking a declaration that the restrictions in the 1948 Instrument of Transfer had expired in the 1950s along with the underlying leases, and that the City thus had unencumbered title to all of the airport land. That suit was filed in the District Court for the Central District of California. *See City of Santa Monica v. United States*, No. 13-cv-08046 (C.D. Cal.).

The district court dismissed the Quiet Title Act suit on statute-of-limitations grounds, but the Ninth Circuit reversed and remanded for an evidentiary hearing, holding that the merits and statute-of-limitations issues were inextricably intertwined. *City of Santa Monica*, 650 F. App'x at 327. In rejecting the argument that the 1948 Instrument of Transfer put the City on notice that the United States claimed a perpetual interest in the property, the Ninth Circuit noted that the restrictions in the

1948 Instrument of Transfer "applied to the 'property *transferred by this instrument,*'" and that "[b]oth leases were set to terminate twelve months after the (then-unknown) end date of Proclamation 2487," which terminated in 1952. *Id.* at 327 (Ninth Circuit's emphasis). The court stated that the remedy specified in the 1948 Instrument of Transfer—a reversionary interest that could be exercised at the option of the United States—"likewise applied to 'the title, right of possession and all other rights *transferred by this instrument*.'" *Id.* (Ninth Circuit's emphasis). And the court declared that "a quitclaim deed 'operates to transfer only what right, title and interest the grantor may have' in the first place." *Id.* at 328 (citing *Hagan v. Gardner*, 283 F.2d 643, 646 (9th Cir. 1960)).

The Ninth Circuit acknowledged that "the Instrument of Transfer's restrictions 'run with the land,'" but it declared that this language "does not conclusively establish notice of a perpetual reversionary interest in the title to the Airport Land itself." *City of Santa Monica,* 650 F. App'x at 328. The court stated that "[w]hile that language likely imposes the same requirements set forth in the Instrument of Transfer on subsequent owners and assigns, we cannot—without reaching the merits—determine what a reasonable landowner should have known about the United States' claim in 1948." *Id.* The court thus remanded for further proceedings, stating that "the merits and notice issues in this case may ultimately depend on the disputed significance of the parties' conduct between World War II and 2008." *Id.*

Trial on the City's Quiet Title Act claim was scheduled for August 2017. The dispute was resolved by the district court's entry of the Consent Decree. *See* Ex. 197 (order entering Consent Decree); Ex. 210 (order closing the case).

ARGUMENT

I. The Petition For Review Should Be Dismissed.

Petitioners' filing confirms that their petition for review should be dismissed because there is no final FAA order for the Court to review. Although petitioners purport to seek review of the settlement agreement, that agreement had "no force and effect" unless it was entered as a Consent Decree. Ex. 10. The settlement agreement therefore was not a final and reviewable order under 49 U.S.C. § 46110 because it did not "determine rights or obligations or give rise to legal consequences." *Safe Extensions, Inc. v. FAA*, 509 F.3d 593, 598 (D.C. Cir. 2007) (quoting *City of Dania Beach v. FAA*, 485 F.3d 1181, 1187 (D.C. Cir. 2007)). It was the Consent Decree—as approved, signed, and entered by the district court—that solely determined rights and obligations of the parties. Petitioners do not ask this Court to set aside the Consent Decree or suggest that this Court would have jurisdiction to do so.

Regardless of the disposition of the petition for review, the Consent Decree will remain in effect, and the signatories to the Consent Decree will be bound by its terms. Indeed, the City has already dismissed its Ninth Circuit petition for review as was required after the Consent Decree was entered. *See* Ex. 200; Order, *City of Santa Monica v. FAA*, No. 16-72827 (9th Cir. Feb. 13, 2017) (dismissing the petition for

review). Petitioners do not suggest that this Court could order that Ninth Circuit litigation reinstated.

Moreover, petitioners concede that they cannot obtain meaningful relief in this Court without an injunction that prohibits the City from shortening its runway. Even assuming *arguendo* that the Court would have a basis to set aside the settlement agreement, such an order would not itself prevent the City from shortening its runway (nor would it require the United States to exercise any rights it might retain in the 1948 Instrument of Transfer's reversionary clause if the City did shorten its runway). That is why petitioners deem it "essential" that this Court enjoin the City from shortening its runway. Mot. 31. But as explained in Part II below, petitioners provide no ground for an injunction against the City.

This case bears no resemblance to the cases on which petitioners rely. In *Suburban O'Hare Commission v. Dole*, 787 F.2d 186 (7th Cir. 1986), a consent decree was entered in 1982, and, two years later, the FAA issued an order that approved a plan to expand O'Hare Airport. The Seventh Circuit concluded that an allegation that the 1984 approval order violated the earlier consent decree did not affect its jurisdiction to review the 1984 approval order. Here, by contrast, there is no FAA order that post-dates the Consent Decree, and the settlement agreement is embodied in that decree.

Petitioners also cite several cases in which administrative settlements ending administrative proceedings were held to be final agency orders under 49 U.S.C.

§ 46110. Mot. 8-10. But those administrative settlements were orders of the relevant agency—not district courts—and they definitely fixed legal obligations. In *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 206 (D.C. Cir. 1984), for instance, this Court held that "the [agency] orders grant[ing] final approval to a rate settlement" that were "analogous to a 'final determination of the justness and reasonableness of the rate filing'" and that brought "the ratemaking proceedings to a close for all parties except [the plaintiff]" were reviewable agency orders. *Id.* Similarly, in *Tur v. FAA,* 104 F.3d 290, 292-93 (9th Cir. 1997), the settlement agreement was docketed by an agency rather than a court, was itself the final document fixing legal obligations by preventing the plaintiff from applying for a pilot's license for two years, and was not merely a preliminary step requiring the parties to seek entry of a consent decree from a court. Those facts are a far cry from the settlement agreement here, which could have "no force and effect" unless entered as a consent decree. Ex. 10.

Petitioners also cite *Natural Resources Defense Council, Inc. v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994), for the proposition that an agency may not avoid judicial review "merely by choosing the form of a letter to express its definitive position on a general question of statutory interpretation." *Id.* at 1133. But that case makes clear that "[t]o determine finality, courts must decide whether the agency's position is definitive and whether it has a direct and immediate effect on the day-to-day business of the parties challenging the action." *Id.* at 1133. Here, the settlement agreement had no effect on day-to-day business—only the district court's entry of the Consent Decree altered

legal obligations. And although petitioners assert that the government cannot evade review of the Consent Decree, they acknowledge that "a consent decree is appealable." Mot. 10. Petitioners cannot evade the deference that a reviewing court would accord a consent decree by bringing an action in a court that lacks jurisdiction to review it.

II. Petitioners' Motion For A Stay And Injunction Should Be Denied.

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20.

Petitioners' burden under the All Writs Act is even higher. Issuance of a writ is "hardly ever granted; those invoking the court's mandamus jurisdiction must have a clear and indisputable right to relief; and even if the plaintiff overcomes all these hurdles, whether mandamus relief should issue is discretionary." *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (en banc); *see also NetCoalition v. SEC*, 715 F.3d 342, 354 (D.C. Cir. 2013).

A. Petitioners Fail To Demonstrate A Likelihood Of Success On The Merits.

1. Petitioners provide no basis for relief against the FAA.

As an initial matter, it is unclear what relief petitioners are seeking against the FAA. The action to which they object—shortening the runway—will be taken by the City. Petitioners do not identify any future FAA action that will affect their interests. Moreover, petitioners do not ask the Court to set aside the Consent Decree, which will continue to bind the FAA.

2. Petitioners provide no basis for relief against the City.

Because the City will take the action to which petitioners object, they declare that "it is essential that a stay apply not only to FAA but also the City (and, to the extent necessary, that this Court's action be framed as an *injunction* vis-à-vis the City)." Mot. 31. Petitioners assert that the All Writs Act allows this Court to issue such an injunction against the City, whose intervention they have opposed. *Id.* at 32. But even assuming that the All Writs Act would allow the Court to enjoin the City from reducing the length of its runway, petitioners' motion provides no basis to do so.

Petitioners' motion simply assumes that, at the time of the settlement, the City was under a legal obligation to maintain the length of its runway. But the City vigorously denied the existence of any such obligation in the briefs that it filed before the Ninth Circuit. Petitioners do not acknowledge the City's arguments and make no attempt to demonstrate that the Ninth Circuit would have rejected them. Petitioners

therefore provide no basis for an injunction against the City, much less demonstrate the clear and indisputable right that is necessary for relief under the All Writs Act.

3. Petitioners' procedural objections to the settlement rest on an incorrect premise and also fail on their own terms.

Petitioners' objections to the settlement agreement rest on an incorrect premise. They contend that the FAA failed to follow procedures that petitioners deem applicable when it "released" the City of obligations under the grant agreement and 1948 Instrument of Transfer. Pet. Mot. 14-22. But as discussed above, the City contested the very existence of such obligations. Although the Consent Decree included the standard language of release, Ex. 202, 204, the City did not concede that there were any obligations for the FAA to release. To the contrary, the decree provided that "[n]othing herein shall be construed to be an admission of liability or as an interpretation of the validity or terms or provisions of any other instruments or contracts." Ex. 206. No statute or regulation precludes the FAA from settling disputes over contested obligations. Petitioners' procedural objections fail on that basis alone.

Petitioners' objections also fail on their own terms. For example, they note (Mot. 15) that FAA regulations do not allow the agency to grant "releases" of terms in an instrument of transfer without finding that the release is "necessary to protect or advance the interests of the United States in civil aviation." 14 C.F.R. § 155.3(a)(2). But even assuming that the settlement agreement could be regarded as such a

"release," the FAA made the requisite finding. The settlement agreement expressly stated that it was entered "in the interest of the public and civil aviation." Ex. 200. The settlement agreement ensures the continuation of significant airport operations for the next twelve years. Although larger jets will be unable to operate safely on a 3,500-foot runway, those operations comprise a small fraction of the total operations at the Santa Monica Airport. *See supra* n.2. Moreover, it is common ground that the City's grant obligations would have expired in 2023 at the very latest. *See supra* p. 6. By requiring the City to maintain airport operations through 2028, the Consent Decree ensures that the airport will be available for the next twelve years to the smaller jets and propeller aircraft that account for the overwhelming majority of current operations. At the same time, the Consent Decree averts the massive disruption to aviation that could have been caused by an abrupt cessation of all airport operations if the City had prevailed on its claims.

Petitioners next seek to rely on FAA regulations that require the agency to consult with the Department of Defense before it may grant a "release from the terms . . . of an instrument of disposal that might prejudice the needs or interests of the armed forces." 14 C.F.R. § 155.9(b) (cited at Pet. Mot. 19). But even assuming that such a "release" occurred, petitioners are commercial entities that are not even arguably within the zone of interests protected by this regulation. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014) ("[W]e presume that a statutory cause of action extends only to plaintiffs whose interests fall within the zone

of interests protected by the law invoked."). Moreover, petitioners fail to show that the settlement agreement will "prejudice the needs or interests of the armed forces." 14 C.F.R. § 155.9(b).

Petitioners' reliance (Mot. 20) on the notice requirements of the Airport Noise and Capacity Act (ANCA) is misplaced, because ANCA applies to noise and access restrictions on aircraft that can take off and land safely at a particular airport. 49 U.S.C. § 47524; 14 C.F.R. pt. 161. For example, in the Second Circuit case on which petitioners rely, the local government had established curfews and weekly flight limits on noisy aircraft that could otherwise use the airport. *See Friends of East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133, 142 (2nd Cir. 2016). Likewise, the 2003 ordinance discussed by petitioners (Mot. 21-22) would have banned jets that were capable of operating safely at the Santa Monica Airport.[3]

Neither the Consent Decree nor the underlying settlement agreement restricts the operations of any aircraft that can operate safely at the airport, now or in the future. Contrary to petitioners' premise, the reconfiguration of a runway is not a "noise or access restriction" that is subject to the notice requirements of ANCA. Instead, federal law requires that a public agency give 30 days' notice to the FAA before the "abandonment of an airport … landing or takeoff area," 14 C.F.R. § 157.5(b), or the permanent closure of an airport, 49 U.S.C. § 46319.

[3] FAA-approved flight manuals provide information for determining whether an airplane may operate at a particular airport. 14 C.F.R. §§ 91.103, 91.1025, 135.23.

In accordance with these provisions, the settlement agreement provides that the City will give 30 days' notice to the FAA before shortening the runway or closing the airport. *See* Ex. 202 ("Prior to the initiation of shortening the runway, the City shall comply with the 30 day notice provisions of 14 C.F.R. Part 157.5(b)(2)."); Ex. 204 ("[T]he City may, in its sole discretion at any time on or after January 1, 2029, cease to operate the Airport as an airport and may close the Airport to all aeronautical use forever, subject only to the applicable 30 day notice requirements set forth in 49 U.S.C. § 46319(a) and 14 C.F.R. Part 157.5(b)(2)."). By way of comparison, if the City wishes to enhance the curfew that is currently in effect at the airport, the settlement agreement provides that the City will comply with ANCA's procedures. Ex. 203 (providing that the City "may submit an application for enhanced curfews consistent with 14 C.F.R. part 161," which implements ANCA).

Petitioners cite *Millard Refrigerated Services v. FAA*, 98 F.3d 1361, 1364 (D.C. Cir. 1996), for the proposition that "ANCA as interpreted by the FAA in its regulations applies to direct as well as indirect restrictions." This Court was simply reciting the argument made by a private party. *See id.* In any event, the Consent Decree and settlement agreement do not authorize any restrictions—direct or indirect—on aircraft that can safely use the reconfigured runway. The fact that larger jets may be unable to operate safely on a shorter runway does not transform the reconfigured runway into a "noise or access restriction" subject to ANCA.

Petitioners' assertion that an environmental analysis under the National Environmental Policy Act (NEPA) was "[a] predicate to the settlement agreement," Mot. 17-19, is equally meritless. An obligation to conduct an environmental analysis is triggered only by "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). "'Major federal action' does not include action taken by the Department of Justice within the framework of . . . civil or criminal litigation, including but not limited to the submission of consent or settlement agreements." 28 C.F.R. § 61.4. As discussed, the only federal action at issue in this case was the FAA's entry into the settlement agreement and Consent Decree that settled disputes over the existence of the City's obligations.

Moreover, even in the context of the release of uncontested obligations, the FAA has designated the "federal release of airport land" as an action that is categorically excluded from the requirement of preparing a formal environmental assessment. *See*, *e.g.*, FAA Order 5050.4B (2006),[4] Table 6-2 (categorical exclusions include "release of an airport sponsor from Federal obligations the sponsor incurred when it accepted an AIP grant or Federal surplus property for airport purposes"). Contrary to petitioners' assertion, documentation for categorically excluded actions is not routinely required. *Id.* § 607(a) ("NEPA implementing regulations do not require

[4] Available at https://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/media/5050-4B_complete.pdf.

documentation for categorically excluded actions. FAA Order 1050.1E, paragraph 305, reflects this, but it also notes that unique situations may occur, prompting the responsible FAA official to document a categorical exclusion.").

B. The Balance Of Harms And The Public Interest Preclude An Injunction.

The balance of the equities and the public interest also preclude an injunction. Although petitioners ask this Court to enjoin the implementation of the settlement agreement, their motion ignores the major benefits to civil aviation that the settlement and Consent Decree achieved. In the Ninth Circuit litigation, the City asserted the right to close the Santa Monica Airport immediately and unilaterally. By requiring the City to maintain airport operations through 2028, the Consent Decree and underlying settlement ensure that the airport will be available for the next twelve years to the smaller jets and propeller aircraft that account for the vast majority of current operations. Moreover, the Consent Decree and underlying settlement prevent the massive disruption to aviation that could have been caused by an abrupt cessation of all airport operations if the City had prevailed on its claims.

These substantial benefits to civil aviation greatly exceed the harms identified in petitioners' declarations, which state that shortening the runway will add about an hour to the commute of certain employees, who will have to fly in and out of Van Nuys Airport instead of the more conveniently located Santa Monica Airport. *See* Ex. 441 ¶ 7 (declaration of Vice President of Flight Operations for Petitioner Wonderful

Citrus LLC) (stating that the shortening of the Santa Monica Airport runway will "requir[e] many Wonderful employees to commute to Van Nuys Airport ('VNY'), to which our jet operations would have to be rerouted"); Ex. 444 ¶ 8 (declaration of Chief Financial Officer for Petitioner Redgate Partners, LLC) (stating that when the runway is shortened, that will require "many employees to commute to Van Nuys Airport, to which our jet operations would have to be re-routed, which is often more than an hour of additional travel"). These asserted harms are a far cry from the harms demonstrated in the cases on which petitioners rely, where "the absence of a stay" would have entailed the "destruction" of a business in its current form. Pet. Mot. 24 (quoting *WMATC v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977)). Petitioners also assert a right of "access to unique real property." Mot. 23. But the case on which they rely for the proposition that a party need not have a direct interest in a real property dispute to be harmed concerned the foreclosure of the plaintiff's home, *Peterson v. D.C. Lottery & Charitable Games Control Bd.*, 1994 WL 413357, at *4 (D.D.C. July 28, 1994), and is inapposite here.

CONCLUSION

For the foregoing reasons, this Court should dismiss the petition for review and deny petitioners' motion for a stay and injunction.

Respectfully submitted,

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MARCH 2017

CERTIFICATE OF COMPLIANCE

I certify that this consolidated response and reply complies with the word limit of Fed. R. App. P. 27(d)(2)(A) and Circuit Rule 27(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 5,188 words.

/s/ Tyce R. Walters

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Service was accomplished on all counsel through the CM/ECF system.

/s/ Tyce R. Walters

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