

## MEMORANDUM

To: U.S. Department of Transportation

From: Troy Edwards, Deputy Mayor of the City of Los Angeles  
Theodore O. Stein, Jr., President, Los Angeles Board of Airport Commissioners

Date: April 9, 2003

Subject: Conversion of Marine Corps Air Station El Toro to a Commercial Airport

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We write to seek the assistance of the Department of Transportation ("DOT") to convert the Marine Corps Air Station El Toro ("El Toro") from a military airfield owned by the Department of the Navy ("Navy") to a commercial airfield owned by DOT, but operated by the Los Angeles World Airports ("LAWA") pursuant to a long-term lease. This memorandum sets forth an initial proposal as to how DOT and LAWA can work together to accomplish this goal, as well as an in-depth discussion of the reasons which support transforming El Toro into a commercial airport.

El Toro is a military airfield located in Orange County, California. El Toro was designated for closure in 1993 under the military base closure laws after 50 years of service to the U.S. Marine Corps in the Pacific Fleet. Since the decision to close El Toro was made, various groups, including the Federal Aviation Administration ("FAA") and the Orange County Board of Supervisors -- the Local Redevelopment Authority ("LRA") -- worked to convert El Toro from a military airbase into a commercial airport while other groups opposed that effort. On March 5, 2002, the voters of Orange County passed Measure W, a local referendum which in essence precluded the LRA from redeveloping El Toro into a commercial airport. After the passage of Measure W, the Navy announced on April 23, 2002 that it would no longer pursue the possibility of converting El Toro into a commercial airport.

We are astounded that the Navy made this decision. In our view, it was both precipitous and ill-advised for variety of reasons. In a region with a tremendous and growing need for airport capacity, DOT and the City of Los Angeles, working together, have an unrivaled opportunity to serve the public interest by converting El Toro into a commercial airport. The airfield at El Toro, reconfigured for commercial use, could within fifteen years be second in size only to Los Angeles International Airport ("LAX") in Southern California, which as a region is currently home to roughly 20 million people and 82 million airline passengers annually.<sup>1</sup> Being able to use El Toro as a commercial airport would be of great utility to millions of air passengers in the region and across the country who travel to and from Southern California, and internationally to and from the Far East. In fact, we are unaware of any circumstance, either presently or in the past, where such a large air transportation infrastructure asset was available for commercial redevelopment in a region where such a substantial and well-recognized need was present.

Specifically, we request that DOT, with LAWA's support and assistance, take the following steps:

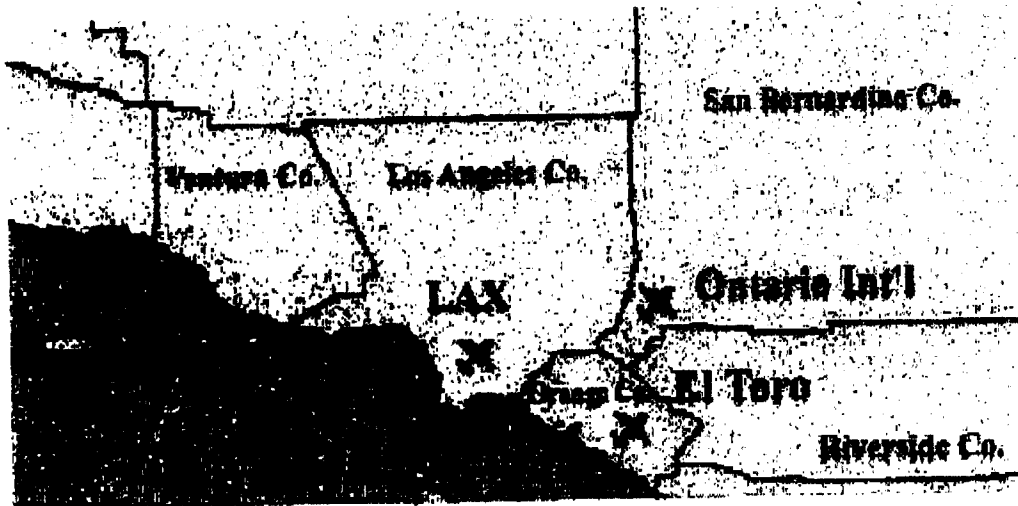
1. Petition the Navy under its regulations with a late request to issue a supplemental Record of Decision ("ROD") withdrawing the prior determination and convey at no cost the surplus property at El Toro to DOT for purposes of civil aviation development.
2. Seek from Congress legislation modeled after the Metropolitan Washington Airports Act, authorizing DOT to own the El Toro property and lease it to an operating authority, namely Los Angeles World Airports.

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<sup>1</sup> See Southern Calif. Assoc. of Gov'ts, *The State of the Region 2002*, at 9 (Dec. 2002). <[http://www.scag.ca.gov/pdf/SRp1\\_16.pdf](http://www.scag.ca.gov/pdf/SRp1_16.pdf)>; SCAG website, *Regional Data Statistics: Air Passengers in SCAG Region* <[http://www.scag.ca.gov/Aviation/regdata\\_AP.html](http://www.scag.ca.gov/Aviation/regdata_AP.html)> (Appendix A) (hereinafter "App.").

3. Enter into a long-term lease with the City of Los Angeles for operation of a commercial airport, modeled after the FAA's long-term lease with the Metropolitan Washington Airports Authority to operate Dulles and Reagan National Airports.
4. Assist Los Angeles's efforts to secure design construction financing of a reconstructed El Toro, including a combination of revenue bonds, AIP grants, and direct appropriation funds.

We seek DOT's assistance in converting El Toro into a commercial airport project not only because the City of Los Angeles cannot do so itself, but also because that result represents in many ways the most important role that representative government can play: to serve the needs of the people by doing what they cannot do for themselves. We are well aware that the future development of El Toro is a controversial subject and that we will likely have to overcome legal challenges at the state and federal levels before a new commercial airport at El Toro becomes a reality. In addition, a project of this magnitude cannot go forward without Congress playing a substantial role. We are fully committed to dedicating all the necessary resources to work with DOT to surmount these legal and regulatory obstacles. We submit this memorandum as a first step in working with DOT to create a new and much-needed major commercial airport in the five-county Southern California area. As such, this memorandum represents our current knowledge and best thinking on a number of relevant topics. Moreover, we are not wedded to the specifics set forth below, but rather are flexible and open to dialogue with DOT on the wide spectrum of issues that this project will generate.



**Southern California International Airports (After El Toro Conversion)  
With Capacity of Over 20 Million Annual Passengers by 2020**

**I. ANOTHER MAJOR COMMERCIAL AIRPORT IS CRITICALLY NEEDED IN THE FIVE-COUNTY SOUTHERN CALIFORNIA AREA**

Southern California desperately needs increased airport capacity. The entire region will face a transportation crisis in the near future without additional airport capacity. In the words of one recent study, "[f]rom an international airport capacity standpoint, the situation of the region is arguably worse compared to [all] other major metropolitan areas across the country."<sup>2</sup> LAX, the only major international airport serving the region, is quickly approaching its physical

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Stephen P. Erie & Andrew M. McKenzie, *A New Orange County Airport at El Toro: A 2001 Update of Economic Impacts* 23 (App. B).

capacity constraints.<sup>3</sup> Indeed, the case for averting a crisis through use of an existing federal airport asset could not be more compelling.

**A. The Southern California Region Faces a Severe Airport Capacity Crunch**

In June of 2001, the Secretary of Transportation acknowledged that "[t]here is no question that good transportation is vital to California's economic prosperity -- and, therefore, that good transportation in California is vital to our nation's economic prosperity."<sup>4</sup> The Secretary noted that over the last decade LAX has seen "phenomenal growth" -- a 61 percent increase -- in the number of passengers flying out of its system. The Secretary is correct to conclude that continued growth will result in "system congestion, and a growing number of flight delays." Similarly, in its most recent study of airport capacity in April 2001, the FAA pegged the continued growth at LAX at 25 percent over the next decade and predicted that "delays will increase substantially in the future."<sup>5</sup>

Consistent with these federal prognostications, the Southern California Association of Governments ("SCAG") estimated in 2001 that the number of annual passengers in the region

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<sup>3</sup> At 3,500 acres, LAX is physically one of the nation's smallest major international airports. Its location in highly urbanized Los Angeles adjacent to the Pacific Ocean, together with strong community opposition, precludes significant expansion possibilities.

<sup>4</sup> Norman Y. Mineta, U.S. Secretary of Transportation, Remarks at the Meeting of the California State Society Golden State Roundtable Luncheon (June 27, 2001) ("Mineta Remarks") (App. C).

<sup>5</sup> FAA, *Airport Capacity Benchmark Report 2001* (Apr. 2001) (Los Angeles International Airport Benchmarks) <[http://www1.faa.gov/events/benchmarks/DOWNLOAD/pdf/airport\\_capacity\\_benchmarks.pdf](http://www1.faa.gov/events/benchmarks/DOWNLOAD/pdf/airport_capacity_benchmarks.pdf)>. An FAA map of the Southern California airports indicates the paucity of major international airports serving the region. See <<http://www1.faa.gov/arp/planning/npius/npias2001/appendb/Calif.htm>> (App. D).

would rise to over 167 million annual passengers ("MAP") by 2025, more than double the 80 MAP recorded in 1997.<sup>6</sup> SCAG also estimated that over the same period airport capacity in the region would reach only 120 MAP. Thus, compared with demand, a 28 percent shortfall in capacity will occur absent further airport development.<sup>7</sup> Equating this shortfall with real dollars, a study by the Orange County Business Council forecasted that because the region's airports, "even under the most optimistic projections, cannot meet all of the county's air transportation needs [by 2020] ... local air travelers and shippers will experience an additional 26 million hours of annual travel time accessing alternative airports, at a cost of nearly \$800 million."<sup>8</sup>

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<sup>6</sup> SCAG, *2001 Regional Transportation Plan* 98-100 (Apr. 2001) (App. E). This estimate reflects a conservative 3.5% average annual growth rate, which is lower than the region's historical 6.4% annual growth rate from 1980 to 2000 and 4.4% rate from 1990 to 2000, as well as annual national growth rate projections by the FAA (4.3% to 2012), Boeing (4.7% to 2020), Airbus (4.9% to 2019), and the International Civil Aviation Organization (4.5% to 2020). See Erie & McKenzie, *A New Orange County Airport at El Toro*, at 26.

<sup>7</sup> SCAG, *2001 Regional Transportation Plan* at 98-100 (Apr. 2001).

<sup>8</sup> Orange County Business Council, *Executive Summary, A New Orange County Airport at El Toro: An Economic Benefits Study* § 4 (Sept. 1998) (App. F).

## B. A New Commercial Airport is the FAA's Preferred Alternative for El Toro

In 1993, El Toro was designated and approved for closure by the Base Realignment and Closure Commission, Congress and the President. The Navy eventually closed El Toro in 1999. In 1996, Orange County's Final Community Reuse Plan first proposed redevelopment of El Toro as a commercial airport, designed to accommodate 38 MAP by the year 2020. The FAA and the Navy identified this proposal, the "Commercial Airport Alternative," as the "preferred alternative" from five proposals contained in their Draft Environmental Impact Statement ("EIS") issued in February 2000.<sup>9</sup> The Navy and FAA then received public comments on the Draft EIS and held a hearing on the reuse of El Toro. In addition, in August 2001, the FAA developed an Airspace Determination which concluded that the LRA's proposal for a commercial airport could be conducted in a safe manner.<sup>10</sup>

In October 2001, following review of the Draft EIS, the LRA proposed a Reduced Commercial Airport Alternative as part of its Airport System Master Plan ("ASMP"). The proposed reuse plan included a smaller Airport Layout Plan ("ALP") of 28.8 MAP and 2 million tons of air cargo by 2020.<sup>11</sup> Under the ASMP, the proposed commercial airport at El Toro would

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<sup>9</sup> In preparing the Draft EIS, the Navy was the lead agency and the FAA a cooperating agency because of its "special expertise and legal responsibility to recommend disposal of surplus property for airport purposes, to manage airspace use and to fund airport development projects." FAA, U.S. Dept. of Transp., & U.S. Dept. of the Navy, *Final Environmental Impact Statement for the Disposal and Reuse of Marine Corps Air Station El Toro*, ES-4 (Mar. 2002) ("Final EIS") (App. G). In 2001, the Navy and FAA agreed to work as joint lead agencies and in 2002 issued the Final EIS jointly. *Id.*

<sup>10</sup> FAA Western-Pacific Region, U.S. Dept. of Transp., *Airspace Determination: Proposed Civil Aviation Use of Marine Corps Air Station El Toro* (Aug. 29, 2001) (App. H).

<sup>11</sup> County of Orange, MCAS El Toro Local Redevelopment Authority, *Airport System Master Plan for John Wayne Airport and Proposed Orange County International Airport*, § 1.2.1 (Oct. 2001) ("ASMP") (App. I).

use 2,386 acres for aviation purposes, and 1,377 acres of the surplus property would go to nonaviation uses. These uses included a regional park and golf courses, homeless assistance providers' offices and food storage and distribution facilities, institutional uses (including the Air National Guard), as well as agricultural, research and development, light industrial, and cultural resources. As depicted on the following map, the FAA and Navy chose this reduced airport design as the "preferred alternative" from six choices for reuse in the Final EIS issued in March 2002:





A rendering of the Reduced Commercial Airport Alternative set forth in the Final EIS is depicted below:



In our view, the starting point for a discussion with the Navy about a commercial airport at El Toro should be the ALP set forth in the Reduced Commercial Airport Alternative in the Final EIS, since this proposal was thoroughly vetted as the preferred alternative for El Toro prior to its eleventh-hour abandonment.<sup>12</sup> The reduced airport preferred by the FAA proposes two 10,000 feet runways running perpendicular to and across two 8,000 feet runways. A large, state-of-the-art terminal would be accessible from the I-5 freeway, with sizeable hangars for cargo, maintenance and other aviation-related operations. The premier quality of El Toro is its location; unlike other commercial airports in the region which are boxed in by urban residential development and have faced significant litigation over noise issues, El Toro is located in a semi-urban agricultural area where the "majority of the land immediately surrounding [the base] is used to raise oranges, strawberries, asparagus and other agricultural crops."<sup>13</sup> Moreover, the

<sup>12</sup> Final EIS § 2.2.1 at 2-9 to 2-17 & Appendix F (App. J).

<sup>13</sup> See Global Security website <<http://www.globalsecurity.org/military/facility/el-toro.htm>> (describing history and development of MCAS El Toro) (App. K).

surrounding community has lived for more than 50 years with the operation of a military airfield at El Toro that has a 14,000 acre buffer zone defined by the Department of Defense's Air Installation Compatible Use Zone ("AICUZ") noise footprint contour.<sup>14</sup>

The ASMP estimated the 20-year capital costs of the proposed aviation improvements at \$2.88 billion (in 1999 dollars) and \$154 million for "airport compatible and revenue supporting uses." This cost estimate includes allowances for contingencies and fees for architects, engineers, construction managers, and program managers. It also includes estimated costs of improvements to be funded directly by the FAA.<sup>15</sup>

### **C. Converting El Toro Will Help Avert an Air Transportation Crisis in Southern California**

Nothing short of converting El Toro to a major commercial airport with an eventual capacity near 30 MAP will adequately address the lack of airport capacity problems that will confront Southern California in 15 to 20 years. Once other airports are stretched to their limits, no other assets will be available to fill the gap in demand from air travelers and business cargo. The 2001 Orange County Business Council study succinctly explained why there are no alternatives to El Toro:

**LAX is the third worst airport in the nation for delays, yet expansion no longer appears to be an option because of widespread political opposition. Ontario International has room to grow, and will serve growing air travel demand in the**

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<sup>14</sup> The Department of Defense established the AICUZ program in response to the Noise Control Act of 1972 to promote an environment free from noise that jeopardizes the public health or welfare. The AICUZ program promotes compatible land uses and proper zoning of public and private property in the vicinity of its military airfields.

<sup>15</sup> ASMP § 1.5.1 (App. D).

Inland Empire. In contrast, Burbank, Long Beach, and John Wayne are very small airports surrounded by dense urban development. They have reached current service levels only because of a lack of viable alternatives. There is plenty of capacity at March Global Port, San Bernardino International, Southern California Logistics, and Palmdale, but these airports are far from the coast where most air passenger demand originates. Camp Pendleton, also mentioned as an alternative, would never be abandoned or authorized for joint use by the Marines.<sup>16</sup>

Taking a similar view, the County's 2001 ASMP concluded that "John Wayne Airport is incapable of accommodating Orange County's commercial air transportation needs due to facility constraints including the relatively short, 5700 foot commercial runway, which can not effectively serve long-haul or international operations."<sup>17</sup> By contrast, the ASMP noted that El Toro provides a "unique opportunity to add necessary aviation facilities to adequately meet the air service needs of the County well into the twenty-first century."<sup>18</sup> Mirroring the LRA's report, the *Los Angeles Times* advocated that because LAX "is already bearing most of the weight for Southern California [-- with] one of the highest rates of near collisions on runways and one of the worst records for late arrivals [-- the region] can't afford to foreclose its limited options at other airports in the region. One of them should remain El Toro."<sup>19</sup>

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<sup>16</sup> Eric & McKenzie, *A New Orange County Airport at El Toro*, at 11. The report notes that development of Ontario "could generate significant new noise and environmental justice impacts on low income and minority populations," and assumes construction of a high speed rail system, "a highly speculative proposition at best." *Id.* at 30.

<sup>17</sup> ASMP § 1.2.1; see also App. K ("Numerous studies over the past approximately 30 years have addressed the inadequacy of John Wayne Airport [IWA] to handle the long term commercial aviation needs of Orange County").

<sup>18</sup> ASMP § 1.1.3.

<sup>19</sup> "Election Recommendation: Retain the El Toro Option," *L.A. Times*, Feb. 16, 2002, Part 2, at 22 (App. L).

If El Toro is not an option, a new greenfield airport -- a new airport build on land currently not used for aviation purposes -- will be needed to fill the capacity gap. There is no area comparable in size to El Toro's 4,700 acres in Orange County or Southern California that could be purchased and developed at a cost anywhere near the estimated price tag of developing El Toro after a no-cost transfer to DOT. The most recent development estimate, \$2.88 billion in 1999 dollars, did not include any land acquisition costs.<sup>20</sup> By comparison, the only major metropolitan airport built from the ground up in the past 25 years is Denver International Airport, which opened in 1995 at a cost of \$4.2 billion in 1985 through 1995 dollars.<sup>21</sup> Three billion dollars was spent on construction and only \$261 million of that cost was for airport planning and land acquisition, as the 53 square mile (34,000 acre) property -- by far the country's largest -- was built in what was, at the time, rural area well outside of the City and County of Denver. Securing enough land to build an airport the size of El Toro within a reasonable distance of Southern California's population centers is an economic impossibility; the prohibitive cost of such scarce property in the highly-developed Southern California region would render a greenfield airport a non-starter.

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<sup>20</sup> ASMP § 10.2.

<sup>21</sup> See Denver International Airport Construction and Operating Costs website, <<http://www.colorado.edu/libraries/govpubs/colonumb/dia.htm>> (citing General Accounting Office, Denver International Airport: Information on Selected Financial Issues, (Letter Report, Sept. 18, 1995 (GAO/AIMD-95-230)) (App. M). Public costs included construction (\$3 billion), airport planning and land (\$261 million), capitalized interest (\$915 Million), and bond discounts (\$43 million).

**D. Federal Transportation Policy Strongly Supports Conversion of El Toro to a Commercial Airport**

In Southern California, as around the country, the answer to future air transportation capacity problems is clear. We agree with the Secretary that there is a "concrete" solution: "if we truly want to meet the longer-run challenges in aviation capacity, we need to pour more concrete. America needs more runways and more airport capacity if we expect to handle the tremendous growth forecast for the next decade and beyond."<sup>21</sup> The sustained rise in Southern California air travel — and the impending capacity crunch — dramatically underscore the truth in the Secretary's words. We are confident that through a long-term partnership with DOT, "together, we can rise to the transportation challenges facing California and our nation."

We further agree with the Secretary that we "all must own a piece of the problem — and ... we all have a piece of the solution." True to the Secretary's advice, we have considered "a variety of options and [now are ready] to make some tough decisions on how we ought to proceed." With this proposal for El Toro, we have "come to the table committed to solve the problem" of the long-term air transportation shortfall in Southern California. We now ask that DOT work with Los Angeles to reverse this grave error by the Navy and secure an irreplaceable infrastructure asset for the entire region.

Converting El Toro into a commercial airport is consistent with the federal aviation policy that places "special emphasis . . . on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities."<sup>22</sup> Federal policy also

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<sup>21</sup> Mineta Remarks (App. C).

<sup>22</sup> See 49 U.S.C. § 47101(a)(10) (App. N).

gives special emphasis to "developing reliever airports," i.e., "an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community."<sup>24</sup> The El Toro airport would go a long way towards relieving current conditions — and avoiding future congestion — at LAX, throughout the region and the nation. As the FAA recently reported to Congress in August of 2002:

About 30 surplus military airfields are expected to be converted to civil use. Most of these military airfields have long runways and associated facilities that can accommodate large civil aircraft. Seven of the surplus military airfields have become commercial service airports (England AFB; Myrtle Beach AFB; Agana Guam NAS; Pease AFB; Scott AFB; Bergstrom AFB and K.I. Sawyer AFB) with Bergstrom and K.I. Sawyer replacing constrained civil airports. Two other surplus airfields have attracted significant cargo service (Mather AFB and Rickenbacker AFB). *The remaining surplus airfields are located in areas where general aviation and reliever airports are needed.*<sup>25</sup>

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<sup>24</sup> See 49 U.S.C. §§ 47101(a)(3), 47102(18).

<sup>25</sup> FAA, U.S. Dep't of Transp., *Report to Congress: National Plan of Integrated Airport Systems (2001-2005)*, ch. 3 (Aug. 28, 2002) (section on "Conversion of Surplus Airfields") (emphasis added) (App. O).

## II. THE SITUATION IS RIPE FOR DOT TO REQUEST THAT THE NAVY ALLOW REUSE OF EL TORO FOR A COMMERCIAL AIRPORT

On April 23, 2002, the Navy issued its Record of Decision (ROD) with respect to the disposition of El Toro.<sup>26</sup> The ROD acknowledged that Orange County worked with the FAA and the Navy to prepare the Final EIS for El Toro that approved a reuse plan as a commercial airport. Specifically, the ROD noted that "from among the several reuse scenarios analyzed during the EIS process, the [Navy] and the FAA identified a commercial airport as *the preferred alternative*."<sup>27</sup> Still, the Navy decided to dispose of the property for "mixed land use."<sup>28</sup>

The ROD characterized this decision as consistent with the Orange County General Plan, which was amended a mere six weeks earlier by a local referendum initiative that prevented the County, as the designated LRA, from using the El Toro property for aviation uses. This initiative, the Orange County Central Park and Nature Preserve Initiative ("Measure W"), was passed on March 5, 2002 and voided an earlier amendment to the County's General Plan allowing for aviation reuse. For some reason, the Navy determined that Measure W "prohibits the FAA and the [Navy] from being able to consider the preferred alternative [of a commercial airport] identified in the Final EIS." As a result, the ROD concluded that the FAA "has no further role in the decision making process for disposal of MCAS El Toro."

<sup>26</sup> 67 Fed. Reg. 20961 (App. F).

<sup>27</sup> 67 Fed. Reg. 20962 (emphasis added).

<sup>28</sup> This mixed use includes development of educational, recreational, cultural and other public park resources. Certain portions of the base are excluded from the proposed transfer, including 975 acres transferred to the FAA for an airport surveillance radar facility and wildlife habitat reserve, and 70 acres transferred to the Department of Justice for FBI and Homeland Security training. A DOT request for the rest of El Toro would merely expand this property transfer.



The ROD's conclusion is not correct on either point. While a local referendum initiative may in some way affect the *local government's* legal authority to use the El Toro property once conveyed from the Navy, the local initiative has no effect on how the federal government may choose to use the federal property.<sup>29</sup> In addition, Measure W may be invalid on its face under the California Military Base Reuse Authority Act, which gives the LRA "powers and duties [that] shall prevail over those of any local entity, including any city or county."<sup>30</sup> At the very least, Measure W cannot prevent the Navy from withdrawing the surplus determination and transferring the property to another federal department, DOT, for it to use as a commercial airport. We propose that DOT ask the Navy to do exactly that.

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<sup>29</sup> As the Supreme Court made clear in *Kleppe v. New Mexico*, 426 U.S. 529 (1976), when Congress enacts legislation pursuant to the Property Clause of the U.S. Constitution that affects public lands, including their occupancy and use, such "federal legislation necessarily overrides conflicting state laws under the Supremacy Clause." *Id.* at 543.

<sup>30</sup> CAL. GOV'T CODE § 67812. In *Save our NTC, Inc. v. San Diego*, 129 Cal. Rptr. 2d 306 (4th Dist. Jan. 14, 2003) (App. FE), the Court of Appeal recently affirmed the denial of a petition for writ of mandamus that sought to apply to surplus military property, after transfer to San Diego, a voter initiative like Measure W which restricted building height in San Diego. The court held that the ordinance was trumped by the Military Base Reuse Authority Act, which delegated broad powers to the LRA to reject any zoning ordinances that conflicted with the base reuse plan. *Id.* at 313. As a result, the voter initiative's height limitation was held inapplicable to the reuse plan, which contemplated maintaining buildings higher than 30 feet. *Id.*

### III. DOT MAY PETITION THE NAVY UNDER ITS BASE CLOSING REGULATIONS TO CONVEY EL TORO FOR DEVELOPMENT AS A COMMERCIAL AIRPORT

The applicable base closing law allows the Navy to consider and accept a late request for conveyance of El Toro to DOT. Under the administrative regulations, the Secretary of Transportation can petition the Secretary of the Navy to reverse its initial decision, withdraw the prior determination for El Toro, and authorize transfer of the El Toro airfield to DOT, contingent on Congressional approval. Specifically, the regulations provide that “[f]ollowing the surplus determination, but prior to the disposal of property, the [Navy] may, at its discretion, withdraw the surplus determination and evaluate a federal agency's late request for excess property.”<sup>31</sup> The regulations also note that late request transfers “shall be limited to special cases, as determined by the Secretary of the [Navy].” In addition, the regulations instruct that the Navy “should” consider the comments of the LRA (which must be given notice of any late request) as well as “the time and effort invested by the LRA in the planning process” when reviewing a late request. The Navy, however, is not bound by any local authority or local laws and can act in accordance with the best interest of the federal government.<sup>32</sup> We are confident that the Navy can be convinced to consider a late request from DOT because the Navy itself has publicly taken the position that construction of a commercial airport at El Toro is in the country's best interest.

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<sup>31</sup> 32 CFR § 175.7(a)(15) (App. Q).

<sup>32</sup> 32 CFR § 175.7(a)(10)(vii) (“The Military Department will make it[s] decision on a request from a federal agency ... based upon [whether the] proposed transfer is in the best interest of the Government.”).

The recent disposition of Homestead Air Force Base in Miami-Dade County, Florida is instructive on how the late request process works.<sup>33</sup> In 1993 the Secretary of Defense recommended the closure of Homestead, which had been heavily damaged by Hurricane Andrew in 1992. In 1994, after considering a proposal from the local reuse committee for a commercial airport and a Final EIS, the Air Force issued an ROD approving redevelopment as a commercial airport, subject to the Air Force's approval of the County's airport plans. In December 1996, the County submitted its application, which proposed twice as much commercial jet operations as originally envisioned along with much larger ground facilities. This caused the FAA and Air Force, upon the urging of environmental groups, to review the Final EIS. In December 1997, the FAA and Air Force announced they would supplement the Final EIS.

After public hearings and a comment period, a draft supplemental EIS was issued in December 1999 and a final supplemental EIS in December 2000. Among several alternatives, the FAA preferred the commercial airport, while the Department of the Interior ("DOI") (with the support of the Environmental Protection Agency) preferred a "mixed-use development involving commercial, industrial and/or residential uses but without a commercial airport." A week after issuance of the final supplemental EIS, DOI sent a letter to the Air Force requesting conveyance to DOI for mixed-use development. The County objected, but a month later the Air Force issued a second supplemental ROD limiting the transfer of the surplus property to mixed-use development. The second ROD offered the property to the County, as LRA, for 90 days to apply for mixed-use development, and then to DOI if the LRA declined to apply.

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<sup>33</sup> See *Miami Bldg. & Constr. Trades Council v Secretary of Defense*, 143 F. Supp. 2d 19, 21 (D.D.C. 2001) (App. R).

The County, airport developers and unions filed suit against the Air Force, challenging the second ROD as an arbitrary reversal and abuse of its authority. The district court, however, gave deference to the Air Force's actions, noting that "an agency may change a past decision so long as there are reasons for the change and those reasons are rationally related to the agency's new decision."<sup>34</sup> Because the Air Force had a justification for reviewing the EIS -- new environmental impacts of a larger airport -- the court rejected the plaintiffs' request for a preliminary injunction to stop the Air Force from enforcing the ROD. The Secretary of the Air Force later rejected the County's appeal of the second ROD and the County dropped its lawsuit against the government.

Although the reuse of a military airfield for a commercial airport was defeated in the Homestead case, its legal importance is procedural: the Air Force reversed its initial decision years after it issued its first ROD in response to a request for transfer of surplus property by a federal agency. We have a similarly forceful case to make to the Navy. The "preferred alternative" in the El Toro Final EIS is a commercial airport, but Measure W seemingly eliminated the LRA, Orange County, as a potential operator of such an airport. Now, however, an alternative operator of the airport -- LAWA -- has come forward to give DOT the vehicle in which it can make a late request to the Navy to convey this invaluable infrastructure asset for development according to the preferred alternative. An alternative operator with legal authority to develop and run an airport provides the Navy with a rational reason for changing its recently issued ROD. The legal path for approaching the Navy regarding El Toro, as further discussed below, is well-established and recently trodden. While any reversal of the ROD would likely

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<sup>34</sup> *Id.* at 26 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Ins. Co.*, 463 U.S. 29, 42-43 (1983)).

ignite similar legal challenges, we are prepared to devote all of the necessary resources to this effort.

**A. The Future of a Commercial Airport at El Toro is a "Special Case," Especially in Light of the Time and Effort Spent Planning Aviation Reuse**

As noted above, the Navy can consider a late request for a transfer only in "special cases." If ever there was a "special case," we believe that a late request from DOT for conveyance of El Toro would be it. As detailed above, Southern California is on the verge of an airport capacity crisis. Cognizant of this looming threat, the LRA worked with the FAA and the Navy for several years to settle on a preferred alternative for disposition of El Toro as a commercial airport. Those plans were scuttled when supporters of Measure W turned out enough votes to enact that measure, and the Navy in response abandoned the alternative for which it and the FAA had publicly expressed preference since early 2000. Surely, a late request to transfer ownership to DOT so we could operate a commercial airport at El Toro -- which the LRA is now ostensibly precluded from doing -- would satisfy the "special case" requirement. Moreover, when the Navy considers -- as it must -- the "time and effort invested by the LRA in the planning process," the fact that the LRA's preferred alternative was to construct a commercial airport at El Toro strongly supports the conclusion that there is significant merit -- as well as much groundwork already accomplished -- to the Navy's granting a late request by DOT for conveyance of El Toro.

**B. DOT's Late Request Would Satisfy All But One of the Requirements for Conveyances in the Base Closing Regulations**

Although reconsideration and alternative disposition is reserved for "special cases," a late request by DOT would be subject to the same conditions that attach to timely requests. First,

DOT would be "encouraged to discuss [its] plans and needs with the LRA" and "to notify the [Navy] of the results of this *non-binding* consultation."<sup>35</sup> Second, the DOT's request for surplus property must contain the following information:

- (i) A completed GSA Form 1334, signed by the Secretary of Transportation;<sup>36</sup>
- (ii) A statement from the Secretary that "the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action);"
- (iii) A statement that DOT has "reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the [DOT's] accountability, including permits to other federal agencies and outleases to other organizations;"
- (iv) "It is in the public interest to acquire the property requested because the benefits than acquisition of a new facility or other property for the program;"
- (v) "A statement that the program for which the property is requested has long-term viability;"
- (vi) "A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of [El Toro] clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;"
- (vii) "A statement that the size of [El Toro] is consistent with the actual requirement;"

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<sup>35</sup> 32 C.F.R. § 175.7(a)(8) (emphasis added). As the Orange County Board of Supervisors is the LRA for El Toro, respecting its role is important to the integrity of the base closure process. It is anticipated, however, that the Board – as currently constituted – would reverse its prior positions and oppose conversion of El Toro as a commercial airport, as airport opponents today hold a majority of seats on the Board. Even so, the Navy is not bound to follow each change in direction of the LRA.

<sup>36</sup> See App. S  
<<http://propertydisposal.gsa.gov/ResourceCenter/Forms/GS1334/PDF/GS1334.PDF>>

- (viii) "A statement that fair market value reimbursement to the [Navy] will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget and the Secretary of the [Navy] or a public law specifically provides for a non-reimbursable transfer"; and
- (ix) A statement that DOT "agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the [Navy]."<sup>37</sup>

Based on the tremendous amount of work already done towards converting El Toro for commercial use, we are confident that a request by DOT can satisfy all of the requirements in these statements, except the "new program" component. Specifically, DOT should be able to certify that: there are no other DOT-owned properties in Southern California that can accommodate an airport (iii); converting El Toro would have greater long term economic benefits than building a greenfield airport and is much more economically viable (iv & vi); a commercial airport at El Toro has long-term viability (v); El Toro's size is consistent with the needs of a commercial airport as reflected in the Reduced Commercial Airport Alternative (vii); the transfer would be for the public benefit, with an OMB waiver for reimbursement (viii); and DOT could agree to accept the costs for the property (with indemnity for environmental costs from the Navy) (ix).<sup>38</sup>

It does not appear, however, that DOT can currently certify that its transfer request would not establish a "new program" within the meaning of the regulations. DOT is not currently authorized to own an airport at El Toro and we cannot locate any general statutory authority from

<sup>37</sup> 32 C.F.R. § 175.7(9)(i)-(ix).

<sup>38</sup> The Navy's environmental cleanup costs are projected to amount to between \$250 to 300 million, with annual caretaker costs of \$2 million.

Congress for DOT (or the FAA) to own a commercial airport. Certainly, federal ownership of an airport near Los Angeles has never been "reflected in a previous budget submission or Congressional action."<sup>39</sup>

Since the regulations are silent as to whether the Navy can waive submission of any of the nine required statements for a transfer request, it is possible that the Navy could waive the "new program" requirement, and consider a request from DOT immediately. Assuming, however, that the Navy will require a statement that the request does not create a new program, DOT (and Los Angeles) may need to ask for Congressional action to authorize DOT to own El Toro. While it is possible that the Navy could refuse to act on a late request until that Congressional authorization is received, we would urge DOT to submit its request with an explanation that DOT is petitioning Congress for statutory authority and funds to own El Toro and to lease it to Los Angeles. The "new program" requirement, however, should not prevent the Navy from acting on, or even withdrawing, its surplus determination pending Congressional authorization of the transfer.

When approaching Congress, our proposal is for DOT (and LAWA) to suggest that Congress pattern authorization of DOT ownership of El Toro after the history of FAA/DOT ownership of the Washington, DC metropolitan area airports. Through special use legislation, Congress created National Airport in 1940 and Dulles Airport in 1950.<sup>40</sup> Both airports were owned by the federal government and operated by the FAA until 1986, when Congress enacted the Metropolitan Washington Airports Act to authorize leasing the airports for a 50-year term to

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<sup>39</sup> 32 C.F.R. § 175.7(a)(9)(ii).

<sup>40</sup> See Act of June 29, 1940, ch. 444, 54 Stat. 686 (creating Washington National); Act of Sept. 7, 1950, ch. 905, 64 Stat. 770 (creating Washington Dulles) (App. T).



the Metropolitan Washington Airport Authority ("MWAA"), a body comprised of federal, state and local appointees.<sup>41</sup> Specifics of this proposal are set forth in more detail below. See Section IV, at 30-37.

**C. The Proposed Transfer of El Toro to DOT is in the Best Interest of the Government**

Upon receipt of a request from DOT, the Navy would then be required to consider several factors (taken from the Federal Property Management Regulations) in making a surplus property determination:

- "(i) The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based;
- (ii) The proposed federal use is consistent with the highest and best use of the property;
- (iii) The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base;
- (iv) The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs;
- (v) The application offers fair market value for the property, unless waived;
- (vi) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department; and
- (vii) The proposed transfer is in the best interest of the Government."<sup>42</sup>

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<sup>41</sup> See 49 U.S.C. § 49101 *et seq.* (App. U); see MWAA lease (App. V).

<sup>42</sup> See 32 C.F.R. § 175.7(10)(i)-(vii). As a general proposition, the Federal Property Management Regulations direct agencies "as far as practicable" to transfer excess real property to other federal agencies, mixed-ownership government corporations, and the government of the District of Columbia. See 41 C.F.R. § 101-47.203-2.

In examining these factors, the Navy could easily determine that the proposed commercial airport is not only a valid and appropriate use of the property, but also in the best interest of the federal government. Under the Federal Property Management Regulations, "highest and best use" means "the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose."<sup>43</sup> Clearly, the Navy could determine that a commercial airport at El Toro promotes the property's maximum value and serves an important public purpose. Moreover, the Navy may benefit financially from a transfer to DOT because reuse of El Toro for airport purposes may require less remediation than if El Toro were reused as a park or other uses that would include a higher degree of individual contact with the environment. Again, however, the issue of whether a transfer to DOT would constitute a "new program" would arise, but this issue must be addressed via political avenues and should not stop the Navy from withdrawing its surplus determination pending Congressional authorization of DOT ownership of an airport.

#### **D. The Navy Should Favor Aviation Use Over Mixed Land Use**

When, as here, there would be ostensibly more than one acceptable application for El Toro, the regulations provide that the Navy should first consider the needs of the military to carry out its mission, and thereafter consider "the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use."<sup>44</sup> Keeping El Toro available as an airfield -- which the military could use in extraordinary circumstances -- would certainly be a better option for the Navy than removing the

<sup>43</sup> 41 C.F.R. §101-47.4909.

<sup>44</sup> 32 C.F.R. § 175.7(a)(11).

existing runways and converting the base into park land which would have no utility to the military whatsoever in the future. Moreover, given the substantial regional and national transportation needs that could be met by conversion of El Toro to a commercial airport, relinquishing this federal asset for potential use as a park is not the highest and best use of this property. As far back as 1998, various experts were asked to critique the LRA's "Millennium Plan," which envisioned mixed use encompassing a central park, housing, businesses, and a stadium. These experts deemed the proposal ill-considered and "highly speculative."<sup>45</sup> Moreover, according to the Final EIS, implementation of the mixed use alternatives will cause more traffic congestion than the airport alternatives.<sup>46</sup>

#### **E. Congressional Leaders Support Airport Reuse at El Toro**

Converting El Toro to a commercial airport will likely become a political issue. To ensure that the political process does not derail DOT's ability to obtain ownership of El Toro, that political process must be nationalized. Unlike the situation with many former military air bases, the redevelopment of El Toro is not a strictly local or regional issue. Members of Congress are on the record in support of the reuse of El Toro for a new commercial airport. In an October 12, 2001 letter to then-Orange County Supervisor Cynthia Coad, Congressman John

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<sup>45</sup> "Where Will Orange County Land in 2020? Without a New Airport: It Could Cost Everyone More Time and Money to Do Without – and Traffic Could Be Worse," *L.A. Times*, May 26, 1998, at A-1 (App. X).

<sup>46</sup> For example, the Village Park alternative would create significant traffic impacts to 4 freeway segments and 25 surface street intersections by the year 2010. In contrast, the Reduced Commercial Airport alternative would create significant traffic impacts to 27 surface street intersections. See Final EIS at 4.12-25, 4.12-95 & ES-18 (Table ES-1: Summary of Potential Significant Environmental Consequences and Mitigation Measures) (App. Y).

Mica (R-FL), the Chairman of the House Aviation Subcommittee, expressed his "strong support" for an airport:

*The existing infrastructure is a national asset and would cost billion[s] of dollars to replicate. Reuse as an airport is without question ideal for meeting the future air transportation needs of your region and our nation.... It would be both a national and community loss if this valuable air transportation facility was not developed to its full potential.<sup>47</sup>*

In addition, Congressman Dana Rohrabacher (R-CA), the representative for California's 47th District (Huntington Beach), took a similar position in a July 11, 2001 letter to Secretary of Defense Donald Rumsfeld, in which he stated that "significant expansion at [LAX] is not practical. MCAS El Toro is the most suitable location for a new civilian airport that could in the short term alleviate the burden on LAX and in the longer term provide suitable growth for domestic and international passenger and cargo air traffic."<sup>48</sup>

Representative Rohrabacher also belongs to a working group of twelve Southern California Members of Congress which developed in May 2001 a statement of principles regarding expansion of the air transportation network in the region. This statement, which the group sent to Secretary Mineta, emphasized that to maintain its economic vitality, Southern California "needs to make optimal use of new and existing airport capacity in the region."<sup>49</sup> The statement noted that "Southern California is also a critical link in the nation-wide aviation

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<sup>47</sup> Letter from John Mica, U.S. House of Representatives, to Cynthia Coad, Orange Cty. Supervisor (Oct. 12, 2001) (App. Z) (emphasis added).

<sup>48</sup> Letter from Dana Rohrabacher, U.S. House of Representatives, to Donald Rumsfeld, U.S. Secretary of Defense (July 11, 2001) (App. AA).

<sup>49</sup> Southern California Regional Airport Congressional Working Group, *A Statement of Principles* (May 2001) <<http://www.house.gov/harman/issues/statements/SCRAAprinciples.html>> (App. BB).

network and must contribute to relieving nation-wide aviation congestion." To promote this regional air transportation plan, the working group pledged to "seek ... appropriate funding ... and express [its] concerns to Federal entities with jurisdiction over airport and aviation issues such as the [FAA] and [DOT]." In response, the Secretary wrote that the airport capacity issue "should be approached from a regional perspective" and that DOT "will support State, local and regional efforts to shape a regional plan and develop the consensus to implement it."<sup>50</sup> As described above in the Regional Transportation Plan of the Southern California Association of Governments, the conversion of El Toro is the centerpiece of this regional solution to a regional and national air transportation capacity issue.

Accordingly, any approach to Congress by DOT (and Los Angeles) should highlight not only the benefits to Southern California of converting El Toro to a commercial airport, but should also focus attention on travel problems that capacity constraints in Southern California will cause for all Americans traveling domestically and internationally to and from the Far East.

**F. A DOT Request to the Navy is the Best Means of Creating a New Commercial Airport**

We have considered several options for securing conversion of El Toro. We are convinced that a partnership with DOT is the best way to proceed in approaching the Navy and the political bodies whose approval and support will be needed. We are not petitioning the Navy directly because only DOT, as a federal agency, has standing to make a late request under the base closure regulations to the Navy to withdraw and reverse its April 23, 2002 ROD. Moreover,

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Letter from Norman Y. Mineta, U.S. Secretary of Transp., to the Honorable Jane Harman, U.S. House of Representatives (June 26, 2001) (App. CC).

the FAA's special status under the base closure laws and its authority to approve all public airport conveyances carries significantly more weight with the Navy than LAWA can muster by itself. Finally, even if we could participate in the process directly, LAWA would prefer to avoid entering into any long-term airport lease with the Department of Defense that could be easily compromised by the exigencies of national defense policy.

#### **IV. CONSTRUCTION AND OPERATION OF A NEW AIRPORT IS FEASIBLE WITHIN SIX YEARS**

LAWA is prepared to undertake the construction of a commercial airport at El Toro subsequent to DOT's securing title to the property from the Navy and authorization from Congress to lease the facility to Los Angeles. The two keys to this plan are leasing and financing. With these two elements in place, as well as work on the environmental review process, a highly ambitious -- but attainable -- construction schedule could permit significant commercial operations in under six years.

##### **A. LAWA Proposes a Lease Modeled after DOT's lease with the MWAA**

LAWA proposes to enter into a 99-year lease with DOT modeled after the FAA's long-term lease with the MWAA to operate Washington Reagan National Airport and Dulles International Airport.<sup>51</sup> Other examples of a long-term lease are available as well, as the FAA currently lists 15 former air bases that have been transferred for commercial use from a Military

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<sup>51</sup> See MWAA lease (App. V)

Department to various LRAs via long-term lease.<sup>52</sup> The elements of a model lease would include:

- Scope of Lease (Premises)
- Term and Extensions
- Compliance with Federal Rules and Regulations
- Maintenance and Care of Property
- Right of Access and Inspection
- Capital Improvements
- Continuing Legal Obligations
- Employees
- Payments
- Utilities
- Insurance Covenants and Risk Management Plans
- Defaults
- Disputes
- Audit
- Notices

In this context, it is important to note that if some rental payment should be required for leasing the airport once it is operational and receiving revenue, a long-term lease offers advantages over an outright sale in that DOT would receive a long-term revenue stream while also receiving the benefit of long-term appreciation of the El Toro property.<sup>53</sup>

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<sup>52</sup> See FAA website, <<http://www2.faa.gov/arp/planning/map/closlist02.doc>> (Department of Defense Realignment and Closure (BRAC) Fiscal Years 1988, 1991, 1993, 1995 Status of Transition of Military Airfields to Civil Airports) (App. W).

<sup>53</sup> For example, under the MWAA lease of Washington Reagan National Airport and Washington Dulles International Airport in 1986, the FAA will receive \$3 million per year for 50 years. See App. V at 25.

## B. Federal Financing and Private Bonds will Facilitate Planning and Construction

In proposing financing for construction and operation of El Toro, we take the estimated \$2.88 billion (in 1999 dollars) initial construction cost identified in the Orange County ASMP as a given baseline, even though the actual construction cost could be substantially greater.<sup>54</sup> We are not in a position at this time to provide our own estimates of construction costs, either initially or long-term. While it is premature to provide a financing plan, based on LAWA's other experiences, financing will undoubtedly consist of two principal elements: federal funding and bond revenues.

Direct appropriations will be needed to pay for preparation of a design plan for the reconstruction of El Toro, and to partially fund initial construction work once a plan is approved. There is Congressional precedent for direct appropriations. For example, when the federal government enacted legislation to create Dulles Airport in 1950, the new law initially appropriated \$14 million to DOT to acquire land and construct an airport.<sup>55</sup> In addition, the new law authorized yearly appropriations of "such sums as may be necessary for the proper development, improvement, maintenance, protection, control, and operation of [the] airport."<sup>56</sup> Construction at Dulles began in 1958 and the airport opened for operations in 1962 at a total cost of \$108.3 million.<sup>56</sup> In addition to appropriations from Congress, LAWA will seek federal funds

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<sup>54</sup> Adjusted for inflation against the Consumer Price Index, \$2.88 billion in 1999 would amount to \$3.18 billion in 2003.

<sup>55</sup> See Act of Sept. 7, 1950, §12 (App. T).

<sup>56</sup> See MWAA website, <<http://www.metwashairports.com/Dulles/history.htm>>. Adjusted for inflation, \$108.3 million in 1962 dollars would equal roughly \$660 million today. See Federal Reserve Bank inflation calculator,



for planning and construction through the FAA's Airport Improvement Program ("AIP").<sup>57</sup> Since the El Toro airport will provide a safe and efficient solution to national air transportation needs, the commercial airport at El Toro will undoubtedly be listed in the National Plan of Integrated

While we anticipate that direct appropriations and grant funding will cover 10 to 20 percent of the cost of design and construction of El Toro, the remaining 80 to 90 percent of the cost will need to be met by revenue bonds. Given the fact that a portion of the bonds will need to be issued before the airport is operational, at least that portion of the bonds will almost certainly require federal guarantees in order to be viable. Once the airport is operating, leasing and concession revenues, landing fees, and passenger facility charges would be expected to generate sufficient revenue to make payments on existing bonds and to permit issuances of further bonds, perhaps without federal guarantees.

Los Angeles is committed to building and running airports incorporating the most ~~high standards of security and safety. As DOT is aware, the City currently has an ongoing~~ LAX Master Plan process underway, which will create at LAX an international gateway that will incorporate the highest levels of airport security and safety. We would expect to implement nothing less than similarly high standards for safety and security at El Toro.

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<http://minneapolisfed.org/Research/data/us/calc/>.

<sup>57</sup> See Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47101 *et seq.* The LRA's Reduced Commercial Airport Alternative proposed financing El Toro through a combination of revenue bonds, taxes, private investments, and the FAA's AIP. See MCAS El Toro Local Redevelopment Authority, *Final MCAS El Toro Community Reuse Plan* at 80 (Dec. 1996) (App DD).

<sup>58</sup> See 49 U.S.C. § 47103.

### C. Additional Environmental Review will be Required

Another factor affecting the cost is the environmental status of El Toro. While the Final EIS has analyzed most of the environmental areas of concern, the approval of a construction and operation plan for El Toro will itself be a major federal action that will require independent, but probably less extensive, environmental review. Several aspects of this review under the National Environmental Policy Act include the following: noise, land use, surface transportation, social impacts, air quality, water quality, endangered species, wetlands, historical/cultural resources and construction impacts. In addition, if Los Angeles is the party responsible for construction of the airport, review may be triggered under the California Environmental Quality Act, which has its own unique set of environmental analysis factors.

Overall, we see no insurmountable environmental problems to the construction of El Toro as a commercial airport. Once the decision to go forward is made, El Toro will need to be reintroduced into the Regional Transportation Plan. This should not be problematic given that El Toro was recently included in the Plan. Environmental remediation measures have already begun, including assessment and cleanup by the Navy, EPA and California Department of Toxic Substances.<sup>59</sup>

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<sup>59</sup> See EPA website, <<http://yosemite.epa.gov/r9/sfund/overview.nsf/ef81e03b0f6bcdb28825650f005dc4c1/f086047196d7ba6b8825660b007cc64c?OpenDocument#approach>>; California Dep't of Toxic Substances Control website, <<http://www.dtsc.ca.gov/database/Calsites/CALP001.CFM?IDNUM=30970003>>.

**D. With Expedited FAA Review, Commercial Operations Could Begin at El Toro Within Six Years**

LAWA anticipates working with DOT and FAA on an expedited basis to secure approval of an Airport Layout Plan and construction of a commercial airport at El Toro. Historically, FAA has employed an accelerated review of large airport projects, including recently placing the LAWA master plan and environmental impact statement on a project priority list pursuant to the President's Executive Order of September 18, 2002 on environmental stewardship. Prior to the executive order DOT granted expedited review for the new commuter and international terminals at Philadelphia International Airport (a project with which the City's advisors were involved). With accelerated review, based on only a preliminary analysis, we believe that the first phase -- planning, design and environmental review -- could be completed within 30 months of commencement. Thereafter, construction sufficient to commence commercial operations of 2 to 4 MAP could be completed within 36 to 42 months. Thus, the total anticipated timetable from initial Congressional approval to commercial operations would be within 72 months, or six years, from commencement.<sup>60</sup>

After operations begin, LAWA would propose to phase in further improvements to increase commercial operations steadily to reach 28.8 MAP and 2 million cargo tons within 20 years of commencement. While highly ambitious, LAWA believes this schedule is attainable because even though there is no modern precedent for building a new major commercial airport in the manner LAWA proposes, LAWA will dedicate its years of experience building and

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<sup>60</sup> Air cargo operations could start much sooner than commercial passenger operations, as much less extensive construction would be needed to commence cargo carriage.

expanding airports at LAX and Ontario, in addition to all the necessary resources and expertise, to meet this ambitious timetable:

**El Tero Construction Timetable**

Year	Action
0	Approval and Initial Design Funding
2.5	Completion of Design and Environmental Review
5.5 to 6.0	Completion of Initial Construction Phase (2-4 MAP)
13	Expansion to 10-12 MAP
20	Expansion to 24-29 MAP

LAWA is fully aware that litigation opposing a commercial airport at El Tero will be filed. Proponents of Measure W will undoubtedly seek injunctive relief to prevent the construction of a commercial airport at El Tero. Although he have not researched this area extensively, the proposed timetable assumes that an injunction will be prevented and that litigation will occur concurrently with the planning phase of redevelopment.<sup>61</sup> As mentioned above, Measure W is highly unlikely to prove enforceable against the Federal government.<sup>62</sup> In addition, given the result of recent litigation in the California courts that denied enforcement of a

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<sup>61</sup> A key element for a court to grant injunctive relief for supporters of Measure W would be a showing of irreparable harm. In the case of El Tero, the opposing litigants would likely claim that their use and enjoyment of the "Great Park" envisioned by Measure W would be lost by any advancement of a commercial airport redevelopment plan. This argument would face significant difficulties, however, as no park currently exists on the military air base and extensive environmental assessment and cleanup will be needed before any development can begin.

<sup>62</sup> See *supra* note 29 and accompanying text.

local voter initiative attempting to restrict the reuse of surplus military property, Measure W may prove to be entirely unenforceable.<sup>63</sup>

### CONCLUSION

Good government means doing the best for as many citizens as possible. Creating a new, major, commercial airport in Southern California is consistent with this maxim. A commercial airport at El Toro would reduce air travel congestion and materially aid the transportation infrastructure in the region and across the country. El Toro presents a unique opportunity to address a compelling need at the most reasonable cost that will be available in the region. As a historical juncture where federal, state and local resources are stretched farther than they have ever been, this remarkable opportunity should not be lost and DOT and Los Angeles should move forward together on a joint mission to convert El Toro for the purpose it is most ideally suited. It would simply be a modern tragedy if El Toro — an invaluable aviation asset in Southern California — is converted to park land, rather than to a commercial airport that could eventually carry nearly 30 million passengers annually. Following both the letter and the spirit of the base closing laws, this exceptional Federal property should be dedicated to benefit the citizens of the entire Nation. We look forward to beginning a dialogue with DOT about this proposal.