APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

STATUTORY PROVISIONS AND JUDICIAL RULES

MEMORANDUM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (JANUARY 3, 2020)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRY ROSEN,

Plaintiff-Appellant,

v.

UNITED STATES GOVERNMENT; ET AL.,

Defendants-Appellees.

No. 18-56059

D.C. No. 2:17-cv-07727-PSG-JEM

On Appeal from the United States District Court for the Central District of California Philip S. Gutierrez, District Judge, Presiding

Submitted December 13, 2019**
Pasadena, California

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: BOGGS***, WARDLAW,
and BEA, Circuit Judges.

Barry Rosen appeals the district court's dismissal of this action for lack of standing. Rosen is a pilot, a pro se plaintiff,[1] and a serial litigant who is asking that the federal courts invalidate a consent decree entered in a different case between the City of Santa Monica and the United States Government concerning the Santa Monica Airport ("SMO"). SMO was transferred to the federal government during World War II, then back to the City under the Surplus Property Act, with conditions that may or may not still be valid regarding its continuing use as an airport. Since the beginning of the jet age, the City has been seeking to close the airport, which has resulted in multiple lawsuits and settlements between the City and the federal government. The most recent of these ended in a 2017 consent decree, under which the City may shorten the runway immediately and must keep the airport open until 2028, but is free thereafter to close it. The case leading to the consent decree has drawn proper intervenors (whose claims have been rejected) and collateral challenges (thus far also unsuccessful, though litigation continues).

Rosen did not move to intervene in that litigation. Rather, in a separate series of complaints (four so far, with a pending request to reverse the district

---

*** The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

[1] Rosen filed his Opening Brief in this case pro se, but has counsel listed on his Reply Brief.

court's denial of leave to file a fifth), Rosen asked the district court to void not only the consent decree but also an expired 1984 agreement between the same parties and to require the federal government to take over the airport or bring in a third party to administer it. The district court held that Rosen did not have standing on several grounds, granted defendants' Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction, and also concluded that Rosen's motion for partial summary judgment was moot. Rosen now appeals, and we affirm.[2]

1. Rosen Lacks Standing. To begin with, he cannot satisfy the requirement of redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018). Were we to void the consent decree, the City and federal government would be back to the status quo ante, under which the government at most has the option to take over the airport, while the City would be litigating to close it immediately. "To establish redressability, a plaintiff must show that it is 'likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *M.S.*, 902 F.3d at 1083, *quoting Lujan*, 504 U.S. at 561. This case does not clear that bar. Moreover, Rosen's complaint about the 1984 agreement between the federal government and the City is not redressable, as that agreement expired in 2015. *See Caldwell v. Caldwell*, 545 F.3d 1126, 1130 (9th Cir. 2008).

When it comes to his challenges to the current litigation and consent decree, Rosen confuses practical redressability with legal redressability, arguing that

---

[2] We deny Rosen's motion for summary disposition as moot.

recent construction shortening the runway pursuant to the consent decree is reversible. But the issue is not whether the actions he proposes can physically be taken. Rather, the question is the legal rights of the City and federal government. Even if the district court did what Rosen proposes—voiding the 2017 consent decree—the parties would have many options to act in ways that would not redress Rosen's grievances.

Finally, while Rosen urges the court to mandate enforcement of a wide variety of statutes and regulations, which the federal government has allegedly neglected with respect to Santa Monica and SMO, it is an elementary point of law that individual enforcement decisions are discretionary and non-reviewable. *See, e.g.*, *Friends of Cowlitz v. FERC*, 253 F.3d 1161, 1170 (9th Cir. 2001), *amended in non-relevant part*, 282 F.3d 609. Thus, these claims also are fatally flawed for want of redressability.

2. Nor does Rosen assert sufficiently imminent injury, with respect to many of his claims, to have standing. "A plaintiff has sustained an injury in fact only if [he] can establish "an invasion of a legally protected interest which is . . . actual or imminent, not conjectural or hypothetical." *Civil Rights Educ. & Enf't Ctr. v. Hosp. Properties Tr.*, 867 F.3d 1093, 1098 (9th Cir. 2017) (quoting *Lujan*, 504 U.S. at 560. Most of the harms Rosen complains about would not happen, if at all, until after 2028. "[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (cleaned up).

3. Furthermore, Rosen has not made out an injury-in-fact. Thus far, his most specific and plausible

allegation—contained in the proposed Fourth Amended Complaint, which he was never given leave to file—is that the shortening of the runway that was allowed immediately under the consent decree has caused him to have to perform go-arounds as well as to rent hangar space elsewhere during construction. Even in this unfiled complaint, Rosen does not provide sufficient factual details to make these more than conclusory statements that do not suffice to provide standing. *Cf. Ashcroft v. Iqbal*, 556 U.S. 662, 682-83 (2009). Rosen's previous complaints offered even less in the way of plausible detail. And even if Rosen in theory could provide more detail, the district court was within its discretion in denying him leave to amend a fifth time. *See Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002). His other allegations of injury-in-fact fail as being insufficiently concrete and particularized. *See Lujan*, 504 U.S. at 560.

4. Rosen's attempts to bring the case under the private-attorney-general doctrine fail because even if there were statutory authority to bring such claims—which there is not—he still would have to show Article III standing in his own right, which he cannot. *See Gee v. American Nat. Ins. Co.*, 260 F.3d 997, 1001-02 (9th Cir. 2001).

5. As standing is a threshold requirement, and as Rosen lacks it, we do not consider his other grounds for appeal.

AFFIRMED.

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (JULY 5, 2018)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

BARRY ROSEN

v.

UNITED STATES GOVERNMENT, FEDERAL AVIATION ADMINISTRATION, and CITY OF SANTA MONICA

Case No. CV 17-7727 PSG (JEMx)

Proceedings (In Chambers):
The Court GRANTS Defendants' motions to dismiss and RENDERS MOOT Plaintiff's motion for partial summary judgment

Before: The Honorable Philip S. GUTIERREZ, United States District Judge.

Before the Court is Defendants the City of Santa Monica, Federal Aviation Administration, and United States Government's ("Defendants") motions to dismiss,

see Dkts. # 57 ("*SM Mot.*"), 58 ("*Fed. Mot.*"),[1] and Plaintiff Barry Rosen's ("Plaintiff") motion for partial summary judgment, *see* Dkt. # 80 ("*MSJ*"). Plaintiff filed oppositions to the motions to dismiss, *see* Dkts. # 98 ("*Fed. Opp.*"), 99 ("*SM Opp.*"), and Defendants replied, *see* Dkts. # 102 ("*Fed. Reply*"), 106 ("*SM Reply*"). Defendants filed oppositions to the motion for partial summary judgment, *see* Dkts. # 92 ("*Fed. MSJ Opp.*"), 94 ("*SM MSJ Opp.*"), and Plaintiff replied, *see* Dkts. # 109 ("*SM MSJ Reply*"), 110 ("*Fed. MSJ Reply*"). The Court finds these matters appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the moving, opposing, and reply papers, the Court GRANTS Defendants' motions to dismiss, and Plaintiff's motion for summary judgment is RENDERED MOOT.

I. Background

A. Factual History

The complex background and procedural history of this case is long, involving multiple other cases, courts, and agencies, and centers on the ongoing disputes about the Santa Monica Airport ("SMO" or "the Airport), its use, and its future. Plaintiff recounts the major events in the Airport's roughly one-hundred year history, including ownership, control, and usage. *See generally* Dkt. # 56, *Third Amended Complaint* ("*TAC*"). The Court does not find it necessary to detail the Airport's entire history here, and will address only the facts it deems relevant to the present motions.

---

[1] Defendants Federal Aviation Administration and United States Government (collectively, "the Federal Defendants") filed a joint motion to dismiss.

In 1981, the Santa Monica City Council adopted a resolution that announced its "intention to close SMO as soon as legally possible." *SM Mot.* 3. Soon after, Defendant the City of Santa Monica ("the City") adopted a new "Master Plan" for the Airport in 1983, resulting in Defendant Federal Aviation Administration ("FAA") bringing enforcement actions against the City. *Id.* In response to these actions, the parties began negotiations which culminated in a settlement agreement ("the 1984 Agreement"). *TAC* ¶ 19; *SM Mot.* 3. The 1984 Agreement released land restrictions on portions of the Airport for non-aviation purposes and specified that it was required to operate as an airport only until July 1, 2015. *TAC* ¶ 19; *SM Mot.* 3. In 1994, the City accepted its last federal grant under the contractual requirement that the Airport would continue to operate for another twenty years, or until June 29, 2014. *SM Mot.* 3. As the 2015 date approached, the City Council in December 2010 decided to initiate a "comprehensive public process" regarding the Airport. *Id.* In April 2013, the process report concluded that the "status quo at the Airport was not acceptable to residents." *Id.* 3-4.

The growing public concern, confirmed by the report's findings, ignited a legal battle between the City and federal government over myriad issues regarding the Airport. *Id.* In October 2013, in an effort to take control of those issues, the City filed a quiet title action ("the Quiet Title Action") against the United States seeking a declaratory judgment that the City had unencumbered title to SMO. *See City of Santa Monica v. United States, et al.*, 650 F. App'x. 326 (9th Cir. 2016); *SM Mot.* 4; *TAC* ¶ 24. While the Quiet Title Action was pending, the City was involved

in several other disputes related to its ability to exercise control over Airport operations and to close SMO. *See SM Mot.* 4. As a result of these disputes, and following a lengthy public process, a Consent Decree between the City and the federal government was proposed, which would: (i) resolve all the outstanding legal disputes between the City and the federal government; (ii) require the City to operate SMO only until December 31, 2028; and (iii) grant the City the right to shorten the runway to 3,500 feet. *TAC* ¶ 27; *Fed Mot.* 4; *SM Mot.* 5. The proposed Consent Decree itself did not dictate the shortening of the runway or the eventual closure of the Airport; it merely set forth a framework for local control of SMO by the City, and granted it the right to shorten the runway or close the Airport after 2028. *See SM Mot.* 9.

On January 30, 2017, the City and the federal government executed the Consent Decree. *Id.* 5-6. On February 1, 2017, the Honorable John F. Walter entered an order approving the Consent Decree. *Id.* 6; *Fed. Mot.* 4. Upon entry by the court, the City made the Consent Decree publicly available by posting it on the City's website and began to hold public hearings to determine the logistics and details of shortening the Airport's runway. *SM Mot.* 6. Defendants note that Plaintiff was not in attendance at any of the hearings. *Id.*

B. Procedural History

On October 23, 2017, Plaintiff initiated this action by filing a petition for writ of mandate and a complaint for declaratory and injunctive relief, as well as an emergency *ex parte* application for a temporary restraining order, to enjoin the City from shortening

the runway. *See* Dkt. # 1, *Complaint*. Three days later, this Court denied Plaintiff's *ex parte* application on multiple grounds. *See* Dkt. # 12; *SM Mot*. 1. Over the course of the following four months (from mid-November 2017 to mid-March 2018), Plaintiff filed a First, Second, and Third Amended Complaint. *See* Dkts. # 28, 44, 56. The City completed the runway shortening project construction on December 23, 2017. *SM Mot*. 8. Defendants now move to dismiss Plaintiff's TAC, and Plaintiff contemporaneously filed a motion for partial summary judgment.

II. Legal Standard

A. 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure ("FRCP") governs the dismissal of a claim at any time prior to final judgment if the court lacks subject matter jurisdiction. It has been a long recognized rule that "the jurisdiction of the court depends upon the state of things at the time of the action brought." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570 (2004) (citations omitted). The plaintiff bears the burden of establishing that subject matter jurisdiction exists. *See Valdez v. United States*, 56 F.3d 1177, 1179 (9th Cir. 1995). When a claim does not arise under any federal law, it does not pose a federal question under 28 U.S.C. § 1331. *ARCO Envtl. Remediation, LLC v. Dep't of Health and Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000).

B. 12(b)(6)

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "contain sufficient factual

matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City and County of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Accordingly, "for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

B. Motion for Summary Judgment

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the

pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant can prevail by pointing out that there is an absence of evidence to support the moving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The evidence presented by the parties must be admissible. *See* Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

III. Discussion

Plaintiff seeks declaratory relief, a writ of mandate, and injunctive relief. *See TAC* ¶¶ 117, 134, 144. Specifically, Plaintiff seeks a declaration that the 2013 lawsuit between the City and United States is invalid *ab initio* on six different grounds; a declaration ordering vacatur of the Consent Decree and portions of the 1984 Agreement between the FAA and the

City; a declaration that the signatures on the Consent Decree are not binding; a writ of mandate directing the FAA to comply with the Administrative Procedure Act ("APA") and National Environmental Policy Act ("NEPA"); a writ of mandate directing FAA to ensure the City complies with FAA regulations; a writ of mandate for the City to comply with all environmental obligations under NEPA, the California Environmental Quality Act ("CEQA"), and other regulations; a writ of mandate directing the City to comply with all State and local regulations; a writ of mandate directing the FAA to retain jurisdiction to ensure that the City complies with FAA regulations; a writ of mandate directing the City to choose between fees or a shortened runway; preliminary and permanent injunctive relief to cease any actions related to the Consent Decree; orders or declarations that the City and the FAA violated their ministerial obligations; and fees and costs. *Id.* ¶¶ 144-169.

Plaintiff asserts a wide range of claims that do not form cognizable causes of action, including "Invalid Contract with Outside Counsel," "Santa Monica had absolutely no right to bring an Action pursuant to 28 U.S.C. § 2675, et al.," "The Court Lack Jurisdiction over CSM's Action," "FAA Overstepped its Authority in the 1984 Agreement," "The [Consent] Decree is Invalid ab initio because FAA Overstepped its Authority," "[Consent] Decree is Invalid due to City Council Conflict of Interest," "Violations of the Local Regulations and CEQA," and "Failure to Enforce Federal Regulations Governing Public Airports." *Id.* ¶¶ 30, 34, 40, 45, 51, 97, 102, 111. The Court will attempt to group Plaintiff's allegations into three categories: claims surrounding the alleged violation of federal statutes and regulations;

claims related to the 1984 Agreement; and claims involving the Airport litigation, settlement agreement, and Consent Decree. The Court now turns to Defendants' motions to dismiss those claims.

A. Defendants' Motions to Dismiss

i. Lack of Subject Matter Jurisdiction

All Defendants move to dismiss on the grounds that the Court lacks subject matter jurisdiction because Plaintiff lacks standing to bring his claims; they argue that he does not allege a concrete injury, and any possible injury he could have is not redressable by this Court. *See generally Fed. Mot.; SM Mot.* To establish Article III standing, a plaintiff must demonstrate that he (1) "suffer[s] an 'injury in fact' which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical,'" (2) "the injury has to be fairly traceable to the challenged action of the defendant," and (3) "the injury will be 'redressed by a favorable decision.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (citations omitted). These three elements must also be met when a plaintiff seeks relief under the Declaratory Judgment Act. *See Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669-70 (9th Cir. 2005) ("Requirement that a case or controversy exists under the Declaratory Judgment Act is identical to Article III's").

a. Federal Claims and Regulations

Plaintiff brings many claims against the Federal Defendants on the basis that they have violated federal statutes and regulations, including the APA, NEPA, and FAA regulations, by, for instance, failing

to file the correct claims, failing to allow for the proper amount of time to pass, failing to conduct the required environmental tests, and failing to enforce their own regulations. *See TAC* ¶¶ 56, 70, 111, 148-163. As with all of his claims, Plaintiff must establish injury in fact and redressability to demonstrate that he has standing. *See Lujan*, 504 U.S. at 560.

Plaintiff spends many pages in his TAC detailing the history of the Airport and the litigation surrounding it; he devotes little time to his own relationship to any of those events. He states that as "a licensed pilot . . . [and] a user of the Airport . . . [and] owner of an aircraft based at the airport . . . [that he] has been injured and continues to face damages . . . " *TAC* ¶¶ 1, 9. He does not offer any specifics as to what that injury might be or what his damages are, or how those might be measured. The statement that he is the owner of an aircraft at the Airport is not sufficient to establish a concrete or particularized injury, nor is the conclusory statement that he "has been injured." *See Lujan*, 504 U.S. at 560 ("Injury in fact must be concrete and particularized . . . "). Plaintiff also states that he "is aware of numerous violations of such regulations, including the fact that the City of Santa Monica has been very discriminatory towards aviation in general and has engaged in numerous activities to keep or otherwise exclude aviation interests in general . . . " and that he has been on the "hangar waiting list (which is very long)" for a few years. *Id.* ¶¶ 1, 9, 113. Plaintiff does not describe in any way how he has been discriminated against, nor does he allege any damages or costs he has suffered as a result of being on the hangar waiting list.

In short, Plaintiff has not sufficiently alleged any concrete or particularized injury as a traceable to any of the alleged federal violations, and thus the first and second prongs of the standing inquiry fail.

Furthermore, to meet the third element, Plaintiff must establish that his harms are redressable by the Court. He falls short here as well. Even if the Court were to find a concrete and traceable injury, Plaintiff must prove that the "injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560. Plaintiff has not explained, for instance, how "vacatur of portions of the 1984 Agreement" could redress any injury he might have. *TAC* ¶ 67. In any event, the Court cannot redress Plaintiff's alleged injuries; a court has no authority to review a discretionary agency decision regarding enforcement of the agency's regulations. *See Hosseini v. Gonzales*, 471 F.3d 953, 956 (9th Cir. 2006) ("An agency's discretionary decisions are insulated from judicial review, whereas non-discretionary decisions can be challenged in court."); *People for the Ethical Treatment of Animals, Inc. v. USDA*, 797 F.3d 1087 (D.C. Cir. 2015). "[A]n agency's decision not to take enforcement action should be presumed immune from judicial review under [5 U.S.C.] § 701 (a)(2)."); *Heckler v. Chaney*, 470 U.S. 821, 832 (1985).

Plaintiff has thus failed to establish standing to bring claims regarding the Federal Defendants' alleged violations.

b. The 1984 Agreement

Plaintiff also seeks to invalidate portions of the 1984 Agreement between the City and the FAA regarding certain land on the Airport property being repurposed for non-aviation uses. *See TAC* ¶¶ 126,

146, 155. Plaintiff has not offered any facts about how an agreement made over 30 years ago and resulting in the repurposing of a portion of the Airport's land injured him in any way, nor how any concrete injury could be traced to the 1984 Agreement.

Furthermore, the 1984 Agreement expired in 2015, so even if Plaintiff alleged an injury, the Court could not redress it. Any claim Plaintiff might have arising from the 1984 Agreement is moot. *See ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 55 (1st Cir. 2013) (affirming dismissal on mootness grounds where plaintiff sought relief against expired agreement).[2]

c. Airport Litigation, Resulting Settlement, and Consent Decree

Plaintiff seeks to invalidate the entire prior Airport litigation, resulting settlement, and Consent Decree because he takes issue with the shortening of the runway and the future closure of the Airport. *See TAC* ¶¶ 148-156. As with the other claims, Plaintiff has not alleged a concrete injury. *See Fed. Mot.* 11. Rather, he alleges that other pilots have been injured by the shortening of the runway, stating that the resulting "very dangerous situation" caused "numerous problems from [sic] pilots, including but not limited to missed approaches . . . delays at other airports and additional costs to other aircraft operators and or [sic] potential aircraft spacing issues." *Id.* ¶ 66. However,

---

[2] Defendants also note that any cause of action Plaintiff asserts relating to the 1984 Agreement is time-barred by the statute of limitations; because the Court determines Plaintiff has not alleged any injury and his claims are moot, it need not reach this issue.

Plaintiff does not allege that he himself experienced any of these issues, and he does not even point to any concrete examples of these "numerous problems" related to other pilots. *See id.* ¶¶ 65-66. Plaintiff alleges no injury to himself other than the previously discussed assertion that he owns an aircraft; further, any injury that could arise from the closure of the Airport is far too speculative and distant to confer Article III standing, given that it is over a decade away and is far from a certainty.[3] *See Fed. Mot.* 9-10. The Court agrees with Defendants that Plaintiff has not stated a concrete, particularized, actual, or imminent injury.

Even if Plaintiff had alleged injury, the redressability requirement would not be met here either. Plaintiff seeks to force either the City, the FAA, or a third party to re-lengthen the runway and prevent the Airport from closing in the future. *See generally TAC.* If the Court found the prior litigation, settlement agreement, or Consent Decree to be invalid on any grounds, that would neither result in a reversal of the runway shortening project nor force the Airport to continue operating after 2028. At most, the ownership and control of the Airport and relationship between the City and the FAA would revert back to its previous state before the litigation, settlement,

---

[3] Furthermore, the potential closure of the Airport under the Consent Decree can happen, at the earliest, after December 31, 2028. *See SM Mot.* 9-10. Therefore, any potential injury is far too speculative to be addressed at this point in time. *See Marino v. Country wide Fin. Corp.*, 26 F.Supp.3d 955, 960 (C.D. Cal. 2014) ("[A] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'") (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

and Consent Decree occurred. *See Fed. Mot.* 10-11. Therefore, any injury to Plaintiff from the runway shortening or future closure would not be redressed by a favorable decision here.

Plaintiff has failed, therefore, to establish Article III standing to bring any of his claims, because he has no concrete injury traceable to Defendants that is redressable by the Court.

ii. Private Attorney General

Plaintiff "also brings this action as a Private Attorney General under the Private Attorney General Doctrine in the public interest for the benefit of other persons similarly affected or situated . . . due to there being hundreds if not thousands of persons that are similarly affected or situated." *TAC* ¶¶ 1, 10. A plaintiff cannot allege grievances on behalf of the public unless the statute at issue provides him with such authority. *See Angela v. City of Albuquerque*, 1:15-CV-01048 WJ-LF, 2016 WL 10720431, *3 (D.N.M. Feb. 16, 2016) (finding a plaintiff claiming he or she is a private attorney general still must have statutory basis); 31 U.S.C. § 3730(b). Plaintiff does not bring any claims under a statute that qualifies him to act as a private attorney general. *See generally TAC*.

Even if Plaintiff asserted a claim that provided the right to act as a private attorney general, which he does not, he is still not exempt from meeting Article III standing requirements in federal court. *See Mangini v. R.J. Reynolds Tobacco Co.*, 793 F. Supp. 925, 929 (N.D. Cal. 1992) (holding that a state-created statutory right to act as a private attorney general does not confer Article III standing in federal court); *Mortera v. N. Am. Mortg. Co.*, 172 F. Supp. 2d

1240, 1243-44 (N.D. Cal. 2001). The Court has already determined that Plaintiff lacks Article III standing, and he also fails to establish the authority to bring any cause of action as a private attorney general.

iii. Conclusion

Plaintiff has wholly failed to establish that he has standing to bring any of his claims. Therefore, the Court GRANTS Defendants' motions to dismiss.

B. Plaintiff's Motion for Partial Summary Judgment

Plaintiff filed a motion for partial summary judgment on May 21, 2018, less than a month after Defendants filed their respective motions to dismiss on April 23, 2018. *See* Dkts. # 57, 58, 80. Because the Court grants Defendants' motions to dismiss, it need not address whether the timing of Plaintiff's motion was proper. Plaintiff's motion for partial summary judgment is RENDERED MOOT.

IV. Leave to Amend

Whether to grant leave to amend rests in the sound discretion of the trial court. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). The Court considers whether leave to amend would cause undue delay or prejudice to the opposing party, and whether granting leave to amend would be futile. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). Generally, dismissal without leave to amend is improper "unless it is clear that the complaint could not be saved by any amendment." *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

Because Plaintiff has already amended his complaint three times and still fails to establish the threshold standing requirement, the Court determines that amendment would be futile. Accordingly, the Court DENIES Plaintiff leave to amend.

V. Conclusion

For the foregoing reasons, the Court GRANTS Defendants' motions to dismiss without leave to amend. Plaintiffs' motion for partial summary judgment is RENDERED MOOT.

This order closes the case.

IT IS SO ORDERED.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING (MARCH 17, 2020)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRY ROSEN,

Plaintiff-Appellant,

v.

UNITED STATES GOVERNMENT; ET AL.,

Defendants-Appellees.

No. 18-56059

D.C. No. 2:17-cv-07727-PSG-JEM
Central District of California, Los Angeles

Before: BOGGS*, WARDLAW, and BEA,
Circuit Judges.

Judge Wardlaw votes to deny the petition for rehearing en banc, and Judges Boggs and Bea so recommend.

---

* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is therefore DENIED.

RELEVANT STATUTORY PROVISIONS AND JUDICIAL RULES

STATUTORY PROVISIONS

5 U.S.C. § 702.—Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, that any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. § 704.—Actions Reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

---

31 U.S.C. § 1341.—Limitations on Expending and Obligating Amounts

(a)

(1) Except as specified in this subchapter or any other provision of law, an officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money

before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

(c)

(1) In this subsection—

(A) the term "covered lapse in appropriations" means any lapse in appropriations that begins on or after December 22, 2018;

(B) the term "District of Columbia public employer" means—

(i) the District of Columbia Courts;

(ii) the Public Defender Service for the District of Columbia; or

(iii) the District of Columbia government;

(C) the term "employee" includes an officer; and

(D) the term "excepted employee" means an excepted employee or an employee performing emergency work, as such terms are defined by the Office of Personnel Management or the appropriate District of Columbia public employer, as applicable.

(2) Each employee of the United States Government or of a District of Columbia public employer furloughed as a result of a covered lapse in appropriations shall be paid for the period of the lapse in appropriations, and each excepted employee who is required to perform work during a covered lapse in appropriations shall be paid for such work, at the employee's standard rate of pay, at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse.

(3) During a covered lapse in appropriations, each excepted employee who is required to perform work shall be entitled to use leave under chapter 63 of title 5, or any other applicable law governing the use of leave by

the excepted employee, for which compensation shall be paid at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates.

---

31 U.S.C. § 1342.—Limitation on Voluntary Services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

---

31 U.S.C. § 1350.—Criminal Penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

49 U.S.C. § 40103.—Sovereignty and Use of Airspace

(a) Sovereignty and Public Right of Transit.—

(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) Use of Airspace.—

(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

---

49 U.S.C. § 47101.—Policies

(a) General.

It is the policy of the United States—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development;

(6) that airport development projects under this subchapter provide for the protection and

enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft;

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities;

(11) that the airport improvement program should be administered to encourage projects that employ innovative technology (including integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices), concepts, and approaches that will promote safety, capacity, and efficiency

improvements in the construction of airports and in the air transportation system (including the development and use of innovative concrete and other materials in the construction of airport facilities to minimize initial laydown costs, minimize time out of service, and maximize lifecycle durability) and to encourage and solicit innovative technology proposals and activities in the expenditure of funding pursuant to this subchapter;

(12) that airport fees, rates, and charges must be reasonable and may only be used for purposes not prohibited by this subchapter; and

(13) that airports should be as self-sustaining as possible under the circumstances existing at each particular airport and in establishing new fees, rates, and charges, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under section 47107(b)(1) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies.

(b) National Transportation Policy.

(1) It is a goal of the United States to develop a national intermodal transportation system that transports passengers and property in an efficient manner. The future economic direction of the United States depends on its ability to confront directly the enormous challenges of the global economy, declining productivity growth, energy

vulnerability, air pollution, and the need to rebuild the infrastructure of the United States.

(2) United States leadership in the world economy, the expanding wealth of the United States, the competitiveness of the industry of the United States, the standard of living, and the quality of life are at stake.

(3) A national intermodal transportation system is a coordinated, flexible network of diverse but complementary forms of transportation that transports passengers and property in the most efficient manner. By reducing transportation costs, these intermodal systems will enhance the ability of the industry of the United States to compete in the global marketplace.

(4) All forms of transportation, including aviation and other transportation systems of the future, will be full partners in the effort to reduce energy consumption and air pollution while promoting economic development.

(5) An intermodal transportation system consists of transportation hubs that connect different forms of appropriate transportation and provides users with the most efficient means of transportation and with access to commercial centers, business locations, population centers, and the vast rural areas of the United States, as well as providing links to other forms of transportation and to intercity connections.

(6) Intermodality and flexibility are paramount issues in the process of developing an integrated system that will obtain the optimum yield of United States resources.

(7) The United States transportation infrastructure must be reshaped to provide the economic underpinnings for the United States to compete in the 21st century global economy. The United States can no longer rely on the sheer size of its economy to dominate international economic rivals and must recognize fully that its economy is no longer a separate entity but is part of the global marketplace. The future economic prosperity of the United States depends on its ability to compete in an international marketplace that is teeming with competitors but in which a full one-quarter of the economic activity of the United States takes place.

(8) The United States must make a national commitment to rebuild its infrastructure through development of a national intermodal transportation system. The United States must provide the foundation for its industries to improve productivity and their ability to compete in the global economy with a system that will transport passengers and property in an efficient manner.

(c) Capacity Expansion and Noise Abatement.

It is in the public interest to recognize the effects of airport capacity expansion projects on aircraft noise. Efforts to increase capacity through any means can have an impact on surrounding communities. Noncompatible land uses around airports must be reduced and efforts to mitigate noise must be given a high priority.

(d) Consistency with Air Commerce and Safety Policies.

Each airport and airway program should be carried out consistently with section 40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair methods of competition in air transportation, maintain essential air transportation, and prevent unjust and discriminatory practices, including as the practices may be applied between categories and classes of aircraft.

(e) Adequacy of Navigation Aids and Airport Facilities.

This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) reliever airports; and

(2) heliports designated by the Secretary of Transportation to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

(f) Maximum Use of Safety Facilities.

This subchapter should be carried out consistently with a comprehensive airspace system plan, giving highest priority to commercial service airports, to maximize the use of safety facilities, including installing, operating, and maintaining, to the extent possible with available money and considering other safety needs—

(1) electronic or visual vertical guidance on each runway;

(2) grooving or friction treatment of each primary and secondary runway;

(3) distance-to-go signs for each primary and secondary runway;

(4) a precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway;

(5) a nonprecision instrument approach for each secondary runway;

(6) runway end identifier lights on each runway that does not have an approach light system;

(7) a surface movement radar system at each category III airport;

(8) a taxiway lighting and sign system;

(9) runway edge lighting and marking;

(10) radar approach coverage for each airport terminal area; and

(11) runway and taxiway incursion prevention devices, including integrated in-pavement lighting systems for runways and taxiways.

(g) Intermodal Planning.

To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall take each of the following actions:

(1) Coordination in development of airport plans and programs.—Cooperate with State and local officials in developing airport plans and programs that are

based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.

(2) Goals for airport master and system plans.—Encourage airport sponsors and State and local officials to develop airport master plans and airport system plans that—

(A) foster effective coordination between aviation planning and metropolitan planning;

(B) include an evaluation of aviation needs within the context of multimodal planning; and

(C) are integrated with metropolitan plans to ensure that airport development proposals include adequate consideration of land use and ground transportation access.

(3) Representation of airport operators on mpo's.—Encourage metropolitan planning organizations, particularly in areas with populations greater than 200,000, to establish membership positions for airport operators.

(h) Consultation.

To carry out the policy of subsection (a)(6) of this section, the Secretary of Transportation shall consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency about

any project included in a project grant application involving the location of an airport or runway, or a major runway extension, that may have a significant effect on—

(1) natural resources, including fish and wildlife;

(2) natural, scenic, and recreation assets;

(3) water and air quality; or

(4) another factor affecting the environment.

---

49 U.S.C. § 47103.—
National Plan of Integrated Airport Systems

(a) General Requirements and Considerations.—

The Secretary of Transportation shall maintain the plan for developing public-use airports in the United States, named "the national plan of integrated airport systems". The plan shall include the kind and estimated cost of eligible airport development the Secretary of Transportation considers necessary to provide a safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the Secretary of Transportation shall consider the needs of each segment of civil aviation and the relationship of each airport to—

(1) the rest of the transportation system in the particular area;

(2) forecasted technological developments in aeronautics; and

(3) forecasted developments in other modes of intercity transportation.

(b) Specific Requirements.—

In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;

(2) consider tall structures that reduce safety or airport capacity; and

(3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) Availability of Domestic Military Airports and Airport Facilities.

To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation under subsection (a) of this section, the Secretary of Defense shall indicate the extent to which domestic military airports and airport facilities are available for civil use.

(d) Publication.

The Secretary of Transportation shall publish the status of the plan every 2 years.

---

49 U.S.C. § 47107.—
Project Grant Application Approval Conditioned on Assurances About Airport Operations

(a) General Written Assurances.—

The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes

obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration

may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget

will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail—

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; and

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

(b) Written Assurances on Use of Revenue.—

(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the

Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) Written Assurances on Acquiring Land.—

(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)

(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer

is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) Assurances of Continuation as Public-Use Airport.

The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) Written Assurances of Opportunities for Small Business Concerns.—

(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)

(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt—

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) Availability of Amounts.

An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) Ensuring Compliance.—

(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) Modifying Assurances and Requiring Compliance With Additional Assurances.—

(1) In general.—Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) Public notice before waiver of aeronautical land-use assurance.—Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) Relief from Obligation to Provide Free Space.

When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) Use of Revenue in Hawaii.—

(1) In this subsection—

(A) "duty-free merchandise" and "duty-free sales enterprise" have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)

(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than

150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of

Transportation for deposit in the discretionary fund established under section 47115.

(7)

(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) Annual Summaries of Financial Reports.

The Secretary shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual summary of the reports submitted to the Secretary under subsection (a)(19) of this section and under section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

(l) Policies and Procedures to Ensure Enforcement Against Illegal Diversion of Airport Revenue.—

(1) In general.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement

of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) Revenue diversion.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—

(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) Efforts to be self-sustaining.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of

airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) Administrative safeguards.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) Statute of limitations.—In addition to the statute of limitations specified in subsection (n)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor or any other governmental entity to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

(m) Audit Certification.—

(1) In general.—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) Content of review.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(n) Recovery of Illegally Diverted Funds.—

(1) In general.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (l) and section 47133), the Secretary, acting through the Administrator, shall—

(A) review the audit or report;

(B) perform appropriate factfinding; and

(C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) Notification.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

(A) the finding; and

(B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) Administrative action.—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

(A) receives notification that the sponsor is required to reimburse an airport; and

(B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) Civil action.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor

shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (o)).

(5) Disposition of penalties.—

(A) Amounts withheld.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) Civil penalties.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) Reimbursement.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (o)).

(7) Statute of limitations.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (l)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(o) Interest.—

(1) In general.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (n) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) Adjustment of interest rates.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) Accrual.—Interest assessed under subsection (n) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (n).

(4) Determination of applicable rate.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(p) Payment by Airport to Sponsor.—

If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (o), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(q)

Notwithstanding any written assurances prescribed in subsections (a) through (p), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49.

(3) The certificated airport operating under section 44706 of title 49 does not contribute to

significant passenger delays as defined by DOT/ FAA in the "Airport Capacity Benchmark Report 2001".

(r)

An airport that meets the conditions of subsections (q)(1) through (3) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(s) Competition Disclosure Requirement.—

(1) In general.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) Competitive access.—On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that—

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

---

49 U.S.C. § 47151.—
Authority to transfer an interest in surplus property

(a) General Authority.

Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may convey to a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

(1) that the Secretary of Transportation decides is—

(A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);

(B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or

(C) needed for developing sources of revenue from nonaviation businesses at a public airport; and

(2) if the Administrator of General Services approves the conveyance and decides the interest is not best suited for industrial use.

(b) Ensuring Compliance.

Only the Secretary may ensure compliance with an instrument conveying an interest in surplus

property under this subchapter. The Secretary may amend the instrument to correct the instrument or to make the conveyance comply with law.

(c) Disposing of Interests Not Conveyed Under This Subchapter.

An interest in surplus property that could be used at a public airport but that is not conveyed under this subchapter shall be disposed of under other applicable law.

(d) Waiver of Condition.

Before the Secretary may waive any condition imposed on an interest in surplus property conveyed under subsection (a) that such interest be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before waiving such condition.

(e) Requests by Public Agencies.

Except with respect to a request made by another department, agency, or instrumentality of the executive branch of the United States Government, such a department, agency, or instrumentality shall give priority consideration to a request made by a public agency (as defined in section 47102) for surplus property described in subsection (a) (other than real property that is subject to section 2687 of title 10, section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note), or section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note)) for use at a public airport.

49 U.S.C. § 47152.—Terms of conveyances

Except as provided in section 47153 of this title, the following terms apply to a conveyance of an interest in surplus property under this subchapter:

(1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged, or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located.

(2) The interest shall be used and maintained for public use and benefit without unreasonable discrimination.

(3) A right may not be vested in a person, excluding others in the same class from using the airport at which the property is located—

(A) to conduct an aeronautical activity requiring the operation of aircraft; or

(B) to engage in selling or supplying aircraft, aircraft accessories, equipment, or supplies (except gasoline and oil), or aircraft services necessary to operate aircraft (including maintaining and repairing aircraft, aircraft engines, propellers, and appliances).

(4) The State, political subdivision, or tax-supported organization accepting the interest shall clear and protect the aerial approaches to

the airport by mitigating existing, and preventing future, airport hazards.

(5) During a national emergency declared by the President or Congress, the United States Government is entitled to use, control, or possess, without charge, any part of the public airport at which the property is located. However, the Government shall—

(A) pay the entire cost of maintaining the part of the airport it exclusively uses, controls, or possesses during the emergency;

(B) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining the property it uses nonexclusively, or over which the Government has nonexclusive control or possession, during the emergency; and

(C) pay a fair rental for use, control, or possession of improvements to the airport made without Government assistance.

(6) The Government is entitled to the nonexclusive use, without charge, of the landing area of an airport at which the property is located. The Secretary may limit the use of the landing area if necessary to prevent unreasonable interference with use by other authorized aircraft. However, the Government shall—

(A) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining and operating the landing area; and

(B) pay for damages caused by its use of the landing area if its use of the landing area is substantial.

(7) The State, political subdivision, or tax-supported organization accepting the interest shall release the Government from all liability for damages arising under an agreement that provides for Government use of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.

California Govt code 54956

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these

meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

California Govt code §54960.

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

10.04.020—posting of Agendas for Special and Emergency Meetings.

(a) At least twenty-four hours before a special meeting of the City Council or any City board or commission, an agenda of the special meeting shall be conspicuously posted specifying the time and location of the special meeting and a brief general description of each item of business to be transacted or discussed at the special meeting.

(b) Notice of the meeting shall be provided City Council and board members or commissioners in the manner provided for in Government Code Section 54956.

(c) Unless an emergency occurs that severely impairs public health or safety, no business other than that which appears on the posted agenda may be transacted at the special meeting.

(d) Emergency meetings of the City Council, boards and commissions may be called and conducted in accordance with the provisions of Government Code Section 54956.5.

JUDICIAL RULES

**Federal Rule of Civil Procedure Rule 5—
Serving and Filing Pleadings and Other Papers**

(a) Service: When Required

(1) In General

Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) If a Party Fails to Appear

No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing Property

If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service: How Made

(1) Serving an Attorney

If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General

A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) Using Court Facilities

[Abrogated (Apr._, 2018, eff. Dec. 1, 2018)]

(c) Serving Numerous Defendants

(1) In General

If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) Notifying Parties

A copy of every such order must be served on the parties as the court directs.

(d) Filing

(1) Required Filings; Certificate of Service

(A) Papers After the Complaint

Any paper after the complaint that is required to be served—must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are

used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) Certificate of Service

No certificate of service is required when a paper is served by filing it with the court's electronic-filing system. When a paper that is required to be served is served by other means:

(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.

(2) Nonelectronic Filing

A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing and Signing

(A) By a Represented Person—Generally Required; Exceptions

A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) By an Unrepresented Person—When Allowed or Required

A person not represented by an attorney:

(i) may file electronically only if allowed by court order or by local rule; and

(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(C) Signing

A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) Same as a Written Paper

A paper filed electronically is a written paper for purposes of these rules.

(4) Acceptance by the Clerk

The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Fed. R. Civ. P. 6

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented

to), 3 days are added after the period would otherwise expire under Rule 6(a).

Fed. R. Civ. P. 12

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

Fed. R. Civ. P. 15

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

Fed. R. Civ. P. 55

(a) Entering a Default.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Central District Local Rule 7-19

L.R. 7-19 Ex Parte Application.

An application for an ex parte order shall be accompanied by a memorandum containing, if known, the name, address, telephone number and e-mail address of counsel for the opposing party, the reasons for the seeking of an ex parte order, and points and authorities in support thereof.

An applicant also shall lodge the proposed ex parte order.

L.R. 7-19.1 Notice of Application.

It shall be the duty of the attorney so applying (a) to make reasonable, good faith efforts orally to advise counsel for all other parties, if known, of the date and substance of the proposed ex parte application and (b) to advise the Court in writing and under oath of efforts to contact other counsel and whether any other counsel, after such advice, opposes the application.

California Public Resources Code § 21177

An action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

California Public Resources Code § 21066

> "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

California Code of Civil Procedure § 1021.5 (private attorney general)

> Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing

with Section 900) of Division 3.6 of Title 1 of the Government Code.

Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in Serrano v. Priest, 20 Cal. 3d 25, 49.

Central District of California L.R. 5-3.2.1—Service

Upon the electronic filing of a document, a "Notice of Electronic Filing" ("NEF") will be automatically generated by the CM/ECF System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court and (2) all pro se parties who have been granted leave to file documents electronically in the case pursuant to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service through the CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by F.R.Civ.P. 4 or L.R. 79-5.3, service with this electronic NEF will constitute service pursuant to the Federal Rules of Civil and Criminal Procedure, and the NEF itself will constitute proof of service for individuals so served.

Individuals who have not appeared in the case in this Court or who are not registered for the CM/ECF System must be served in accordance with F.R.Civ.P. 5, and proof of service on such individuals must be made by declaration in the form required by L.R. 5-3.1.2.

Central District of California L.R. 7-12—Failure to File Required Documents

The Court may decline to consider any memorandum or other document not filed within the deadline set by order or local rule. The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion, with the exception that a motion pursuant to F.R.Civ.P. 56 may not be granted solely based on the failure to file an opposition

---

Central District of California L.R. 83-2.1.1—Appearance Before the Court

L.R. 83-2.1.1.1—Who May Appear

Except as provided in L.R. 83-2.1.3, 83-2.1.4, 83-2.1.5, 83-4.5, and F.R.Civ.P. 45(f), an appearance before the Court on behalf of another person, an organization, or a class may be made only by members of the Bar of this Court, as defined in L.R. 83-2.1.2.

Central District of California L.R. 83-2.1.2—The Bar of this Court

L.R. 83-2.1.2.1—In General

Admission to and continuing membership in the Bar of this Court are limited to persons of good moral character who are active members in good standing of the State Bar of California. If an

attorney admitted to the Bar of this Court ceases to meet these criteria, the attorney will be subject to the disciplinary rules of the Court, infra.

Central District of California L.R. 83-2.1.4—Attorneys for the United States, or Its Departments or Agencies

L.R. 83-2.1.4.1—Attorney for the United States, or its Departments or Agencies

Any person who is not eligible for admission under L.R. 83-2.1.2 or 83-2.1.3, who is employed within this state and is a member in good standing of, and eligible to practice before, the bar of any United States Court, the District of Columbia Court of Appeals, or the highest court of any State,

Territory or Insular Possession of the United States, and is of good moral character, may be granted leave of court to practice in this Court in any matter for which such person is employed or retained by the United States, or its departments or agencies. The application for such permission must include a certification filed with the Clerk showing that the applicant has applied to take the next succeeding Bar Examination for admission to the State Bar of California for which that applicant is eligible. No later than one year after submitting the foregoing application, the applicant must submit to this Court proof of admission to the State Bar of California. Failure to do so will result in revocation of permission to practice in this Court.

California Business and Professions Code 6125

No person shall practice law in California unless the person is an active licensee of the State Bar.

California Business and Professions Code 6126

(a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive licensee of the State Bar, or whose license has been suspended, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdi-

vision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months. However, any person who has been involuntarily enrolled as an inactive licensee of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(c) The willful failure of a licensee of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.

California Business and Professions Code 6127

The following acts or omissions in respect to the practice of law are contempt's of the authority of the courts:

(a) Assuming to be an officer or attorney of a court and acting as such, without authority.

(b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active licensee of the State Bar.

Proceedings to adjudge a person in contempt of court under this section are to be taken in accordance with the provisions of Title V of Part III of the Code of Civil Procedure.

California State Bar Rule 5.5

(b) A lawyer who is not admitted to practice law in California shall not:

(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

Santa Monica City Charter § 613 Open Meetings.

(a) Unless otherwise permitted by federal or state law, City Council meetings shall be open and accessible to all members of the public. The City Council may hold its meetings in the City Council Chambers of the City Hall or at such other locations as the City Council may by ordinance or resolution designate.

(b) The City Council shall by ordinance establish procedures for informing the public of its meetings. The ordinance shall ensure that, to

the maximum extent feasible, the public is provided with timely and adequate notice of City Council agenda and that the public is provided with the opportunity to comment on proposed City Council actions.