



AGENDA STAFF REPORT

ASR Control 22-000875

MEETING DATE: 10/18/22
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport (Approved)
DEPARTMENT CONTACT PERSON(S): Charlene V. Reynolds (949) 252-5183
 Eric R. Freed (949) 252-5043

SUBJECT: John Wayne Airport Capacity Allocations for 2023 Plan Year

CEO CONCUR
 Pending Review

COUNTY COUNSEL REVIEW
 No Legal Objection

CLERK OF THE BOARD
 Consent Calendar
 3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years: No

Prior Board Action: 11/2/2021 #4, 11/3/2020 #6

RECOMMENDED ACTION(S):

1. Authorize the Airport Director to allocate Class A and Class E Average Daily Departures and Seat Capacity to Qualified Commercial Passenger and Commercial Cargo Air Carriers and Passenger Capacity to Qualified Commuter Passenger Air Carriers for the 2023 Plan Year (January 1, 2023, through December 31, 2023), as reflected on Attachments A and B, and in a manner consistent with the terms of the Phase 2 Commercial Airline Access Plan and Regulation.
2. Authorize the Airport Director to withdraw Seat Capacity during the 2023 Plan Year if it becomes necessary to ensure compliance with the 11.8 million annual passenger limitation at John Wayne Airport, consistent with the requirements set forth in Section 6 of the Phase 2 Commercial Airline Access Plan and Regulation.
3. Authorize the Airport Director to allocate or reallocate any additional Regular or Supplemental Average Daily Departures and any necessary associated Seat Capacity, which may become available during the 2023 Plan Year, in a manner consistent with the terms of the Phase 2 Commercial Airline Access Plan and Regulation.
4. Authorize the Airport Director to allocate additional Supplemental Seat Capacity to Qualified Commercial Passenger Air Carriers during the 2023 Plan Year if it is determined that such allocations can be made without jeopardy to the 11.8 million annual passenger limitation of the Phase 2 Commercial Airline Access Plan and Regulation.

5. Authorize the Airport Director to waive Section 5.1.1 of the Phase 2 Commercial Airline Access Plan and Regulation and allocate up to 30 Remain Overnight positions for Commercial Air Carrier use during the 2023 Plan Year, pursuant to Section 5.1.1, as reflected in Attachment A, and provide authority to withdraw the additional three Remain Overnight positions for safety or operational purposes, as required.
6. Authorize the Airport Director to allocate Passenger Capacity and Remain Overnight positions and authorize the Airport Director to allocate any additional Supplemental Passenger Capacity and Remain Overnight positions to Qualified Commuter Carriers during the 2023 Plan Year if it is determined that such allocations can be made without jeopardy to the 11.8 million annual passenger limitation.
7. Find that the County retains and reaffirms its sole and exclusive discretion to require mandatory withdrawals of operational capacity in any form if the County determines such action to be appropriate to ensure continued compliance with the 11.8 million annual passenger limitation or for any other reason, consistent with the requirements set forth in Section 6 of the Phase 2 Commercial Airline Access Plan and Regulation.

SUMMARY:

Approval of the proposed allocation of Regulated Average Daily Departures, Seat Capacity, Remain Overnight Capacity and Passenger Capacity to scheduled Commercial Passenger Air Carriers, Commercial Cargo Carriers and Commuter Passenger Air Carriers will provide John Wayne Airport with the necessary authority to ensure compliance with the County's Phase 2 Commercial Airline Access Plan and Regulation for the 2023 Plan Year.

BACKGROUND INFORMATION:

The 2023 allocation recommendations have been made in the context of carefully balancing the needs of the Orange County community for adequate commercial air transportation facilities and the desire of the local community for environmentally responsible air transportation operations at JWA. In addition, the allocation recommendations further reflect the experience of the County in the management and operation of John Wayne Airport (JWA) and addressing the public concerns resulting from operation of the Airport.

County regulation of a maximum permissible number of Average Daily Departures (ADD) is one of two principal restraints imposed on JWA operations by the County to control aircraft noise in residential areas around JWA. Limitation on the maximum permissible number of ADDs has been an element of the County's regulation of JWA since 1972.

There are presently two defined classes of ADDs in the Phase 2 Commercial Airline Access Plan and Regulation (Phase 2 Access Plan), Class A and Class E. The class of aircraft permitted the highest relative single event noise level is Class A. The County allocates up to 95 Class A ADDs (January 1, 2021, through December 31, 2025). The quietest class of aircraft is Class E. The County allocates up to 14 permanent Class E ADDs; however, the absolute number of maximum permissible Class E Authorized Departures is not directly regulated by the County. Instead, the maximum permissible number of Class E

Authorized Departures is limited by the current million annual passengers (MAP) limitation of 11.8 MAP, which is the second principal restraint, under the 1985 Settlement Agreement, as amended.

The Phase 2 Access Plan identifies both Regular and Supplemental capacity allocations. The principal difference is that Regular ADDs are those that are allocated on a long-term basis, while Supplemental ADDs are allocated on a short-term basis, usually for one Plan Year. The Regular ADDs form the foundation for commercial operations at JWA, while the Supplemental ADDs are allocated each Plan Year to maximize operational capacity while maintaining sufficient flexibility to ensure that the total passenger service level remains within the MAP limitation.

The Board of Supervisors (Board) previously approved capacity allocations on November 2, 2021, and November 3, 2020. In connection with the annual process for allocating operating capacity for the 2023 Plan Year, and consistent with past Plan Year allocations, JWA requested that each interested incumbent and new entrant Air Carrier and Commuter Carrier submit its capacity requests for the 2023 Plan Year. JWA staff has carefully reviewed those requests and all related information. This report contains JWA's specific allocation recommendations for the 2023 Plan Year and a discussion of the basis for those recommendations.

The recommendations provided in this report achieve several objectives: (1) accommodate, to the extent possible, the ADD, Seat Capacity, Remain Overnight (RON) and Passenger Capacity requests received from the incumbent and new entrant carriers; (2) provide internal County controls to ensure compliance with the 11.8 MAP limitation and the annual cap on numbers of Regulated ADDs; and (3) meet all other legal and regulatory obligations.

Attachment A identifies the specific ADD, Seat Capacity, and RON allocations for Qualified Air Carriers recommended by JWA for the 2023 Plan Year. The recommended Passenger Capacity and RON allocations to Qualified Commuter Carriers for the 2023 Plan Year are set forth in Attachment B.

New Entrant Allocations

The Phase 2 Access Plan provides that potential new entrant Air Carriers and Commuter Carriers have priority on the Air Carrier and Commuter Carrier waiting list based upon the dates when the County first received their written requests of interest to commence service at JWA. JWA allocated capacity to one new entrant Air Carrier (Spirit) in the 2020 Plan Year and three new entrant Air Carriers (Allegiant, Sun Country and Air Canada) in the 2021 Plan Year. No new entrant Air Carriers were allocated capacity in the 2022 Plan Year. The accommodation of new entrants is particularly important in the light of federal law and FAA's historical interest in and encouragement of policies that facilitate the ability of air carriers to gain access to airports to ensure competition among air carriers and increased travel opportunities for the flying public.

Based on the requests for the initiation of new entrant service in connection with the 2023 Plan Year, the Airport is requesting authorization to allocate one Class A ADD to Aeromexico and two Class A ADDs to Breeze Airways as new entrant Air Carriers in the 2023 Plan Year. Both Aeromexico and Breeze Airways propose to initiate service at the Airport on January 1, 2023. While Aeromexico's request for one Class A ADD is fulfilled, the Airport is only able to allocate two of the three Class A ADDs requested by Breeze Airways. Therefore, Breeze Airways will be placed at the top of the Airport's Incumbent Reallocation Priority List to receive its third requested Class A ADD, if one becomes available in future Plan Years.

In addition, JWA is requesting authorization to allocate 9,764 passengers to one new entrant Commuter Carrier, Southern Airways Express, for use during the 2023 Plan Year.

Associated Operating Group Provisions

The Phase 2 Access Plan allows Air Carriers and Commuter Carriers operating at JWA to declare annually the formation of an Associated Operating Group (AOG) for purposes of conducting operations at JWA. AOGs are also formed by Air Carriers and Commuter Carriers interested in sharing capacity among AOG members. Alaska/Horizon and Delta/WestJet have requested to operate as members of two separate AOGs during the 2023 Plan Year.

The Phase 2 Access Plan includes a number of regulations, which apply to the allocation of capacity to and operation of AOGs. These provisions require that Air Carriers and Commuter Carriers conducting operations as an AOG be treated as a single carrier with respect to the allocation of capacity. The historical purpose for these provisions is to ensure against a group of Affiliated Carriers gaining an advantage over competitors solely because of the way in which they have chosen to organize themselves for business purposes.

The recommended allocation of capacity to Alaska/Horizon and Delta/WestJet reflects AOG provisions of the Phase 2 Access Plan. The AOG allocations are set forth in Attachment A.

Allocation of Permanent Class E ADDs

The Phase 2 Access Plan allows an allocation of 14 permanent Class E ADDs by means of a trade-out voluntarily undertaken by the Air Carriers. Specifically, one Class A ADD can be traded for two new permanent Class E ADDs. Southwest currently operates all 14 of these permanent Class E ADDs through December 31, 2025, as set forth in Attachment A.

Allocation of Class A ADDs Currently Under Direct County Control

As a result of Air Carrier operational decisions and changes in the airline industry that have occurred over the past few years, the County currently has six Class A ADDs within its control. In recent Plan Years, JWA has requested authorization to allocate County-controlled Class A ADD capacity on a permanent or supplemental basis. Based on the request to authorize the allocation of three County-controlled Class A ADDs to new entrant Air Carriers, associated Seat Capacity requested, and in order to maintain JWA's MAP limitation, JWA is not able to allocate any additional County-controlled Class A ADDs to the Commercial Passenger Air Carriers on a regular permanent basis for use during the 2023 Plan Year, but has the ability to allocate County-controlled Class A ADD capacity in future Plan Years through December 31, 2030.

Therefore, the three remaining County-controlled Class A ADDs have been allocated as supplemental capacity for the period from January 1, 2023, through December 31, 2023, at which time the capacity will return to the County for possible future allocation. The recommended allocation of Supplemental Class A ADD capacity is set forth in Attachment A. Frontier, Spirit and United have each been allocated one Supplemental Class A ADD for use during the 2023 Plan Year.

Allocation of Class A Departures for Commercial Cargo Operations

The Phase 2 Access Plan provides the County with the ability to allocate up to four Commercial Cargo Class A ADDs and the discretion to allocate up to two of these four Commercial Cargo Class A ADDs to passenger carriers when not needed for cargo operations at JWA. This capacity, however, may only be allocated on a supplemental basis for one Plan Year in any year where Commercial Cargo Carriers have not requested those ADDs.

Neither FedEx nor UPS has requested any additional operating capacity beyond the two Cargo Class A ADDs (one each) that have been allocated to them through December 31, 2023. Therefore, JWA is requesting authorization to allocate the two additional Cargo Class A ADDs currently available to the

next two Commercial Passenger Air Carriers on the reallocation priority list, which are American and Southwest. American and Southwest are recommended to receive one Cargo Class A ADD each on a supplemental one-year basis during the 2023 Plan Year, as reflected in Attachment A.

Seat Capacity Allocations

A total of 16,223,832 seats were requested by the Air Carriers as part of the 2023 Plan Year allocation process. JWA is requesting authorization to allocate a total of 14,499,222 seats for the 2023 Plan Year. Historically, the number of seats allocated exceeds the 11.8 MAP limitation because Air Carrier load factors (seats filled vs. seats available) is less than 100 percent. Of the 14,499,222 seats recommended for allocation, JWA projects a 78.6 percent load factor by Air Carriers during the 2023 Plan Year.

A total of 12,790,371 seats are recommended for allocation in support of Class A operations. A total of 1,708,851 seats are recommended for allocation in support of Class E operations. The recommended Seat Capacity allocation would accommodate all Air Carrier presumptive seat totals for use during the 2023 Plan Year. The specific Seat Capacity allocation recommendations for the Air Carriers are reflected in Attachment A.

Section 6 of the Phase 2 Access Plan outlines provisions which permit the County to withdraw operational capacity at such times, on such conditions, and for such reasons as the County, in its sole and exclusive discretion, determines are appropriate to ensure that the MAP limitation is not exceeded during any Plan Year, or for any other reason.

Air Carrier RON Allocations

The allocation of RON parking positions to the Air Carriers and Commuter Carriers has long been a commercially and operationally significant issue to the carriers. The limited physical facilities available at JWA for overnight parking of Air Carrier and Commuter Carrier aircraft requires that the County, limit the number of Air Carrier and Commuter Carrier RON positions, control the location and use of Air Carrier and Commuter Carrier RON positions and place certain other restrictions on RON activity at JWA.

A total of 28 RON positions were requested for allocation for the 2023 Plan Year. The Phase 2 Access Plan provides for an allocation of only 27 Air Carrier RONs. However, JWA is requesting authority from the Board to waive the Section 5.1.1 RON limit for the 2023 Plan Year and is requesting that the Board authorize JWA to allocate up to 30 RONs for use during the 2023 Plan Year in accordance with Section 5.3 of the Phase 2 Access Plan and consistent with past Plan Year allocation requests. The recommended RON allocations (gate and apron) for Air Carriers fulfill all 28 of the gate and apron RON position requests for the 2023 Plan Year and are reflected in the last two columns of Attachment A.

JWA requests authorization to withdraw any RON capacity over the 27 RON positions that the Phase 2 Access Plan currently authorizes for allocation if JWA determines that the allocation of up to 30 RON positions will jeopardize the safe and efficient operations at JWA or will place undue restrictions on RON activity at JWA.

Passenger Capacity Allocations to Commuter Carriers

Two Qualified Commuter Carriers, SkyWest Airlines (Alaska and United) and Delux Public Charters, LLC (JSX), have requested Passenger Capacity allocations for the 2023 Plan Year. SkyWest has requested an allocation of 46,444 passengers. JSX has requested an allocation of 228,082 passengers. In addition, and as discussed above, one new entrant Commuter Carrier, Southern Airways Express, has requested an allocation of 9,764 passengers.

Section 3.5.1 of the Phase 2 Access Plan creates a Passenger Capacity set aside for the allocation of 400,000 Authorized Passengers on a priority distribution to Commuter Carriers in each Plan Year. JWA recommends that 46,444 passengers be allocated to SkyWest and 9,764 passengers be allocated to Southern Airways Express for use during the 2023 Plan Year. JWA recommends that 228,082 passengers be *conditionally* allocated to JSX for use during the 2023 Plan Year. Please see the discussion below relating to the allocation conditions of 228,082 passengers to JSX for the 2023 Plan Year. Therefore, JWA recommends that a total of 284,290 passengers (228,082 conditionally) be allocated for Commuter Carrier use during the 2023 Plan Year. This proposed allocation of Commuter Carrier capacity is reflected in Attachment B.

JSX Allocation Conditions

Since initiation of service, JSX has requested that it be permitted to operate at ACI Jet's Fixed-Based Operator (FBO) leasehold, an operational plan that was previously granted in lieu of operating out of the JWA Thomas F. Riley (Terminal). Pursuant to Section 8.1.7(b) of the Phase 2 Access Plan, JSX was conditionally permitted to operate at ACI Jet's FBO leasehold during the 2018 Plan Year subject to completion of the necessary environmental review and analysis relating to parking and traffic impacts of its operations, and implementation of any necessary related mitigation. Under Section 8.1.7(b) of the Phase 2 Access Plan, discretion is provided to the Airport Director to permit a Qualified Commuter Air Carrier to conduct passenger operations at the location of an FBO. JSX has conducted operations out of ACI Jet's FBO leasehold for the 2018 through 2022 Plan Years.

JSX has again requested to operate at ACI Jet's FBO leasehold during the 2023 Plan Year. Consistent with operations by JSX during the past five Plan Years, JWA again recommends that JSX be permitted to operate at ACI Jet's FBO leasehold to the extent approved by ACI Jet and to the extent its operations fall within the 95,070 passenger levels, which is the environmental envelope/clearance provided by previous environmental review and analysis related to parking and traffic impacts of Commuter Carrier operations at FBOs. To the extent that JSX wishes to provide operations over its current allocation of 95,070 passengers during the 2023 Plan Year, JSX must move all of its operations to the Terminal. Essentially then, JSX can either operate 95,070 passengers at ACI Jet's FBO leasehold during the 2023 Plan Year or move its operations entirely to the Terminal and provide operations for up to 228,082 passengers, pursuant to their request, out of that facility, similar to the manner in which SkyWest is operating at the Terminal.

JWA also requests authority to make supplemental allocations of additional Authorized Passengers during the 2023 Plan Year if additional Commuter Carrier capacity requests are received and if actual operations during the Plan Year indicate that supplemental capacity allocations would not jeopardize the 11.8 MAP limitation. A total of 284,290 passengers are recommended for allocation to Commuter Air Carriers factoring in a 98.3 percent projected utilization during the 2023 Plan Year.

RON Allocations to Commuter Carriers

In addition to its Passenger Capacity request, JSX has requested an allocation of three RON positions for the 2023 Plan Year and Southern Airways Express has requested one RON position. Consistent with these requests, JWA requests authority to allocate three RON apron positions to JSX and one RON apron position to Southern Airways Express for use during the 2023 Plan Year. The four RON apron position allocations to Commuter Carriers will all be located on the commercial ramp for use during the 2023 Plan Year.

Compliance with CEQA: The proposed action is a necessarily included element of the project considered in Final Environmental Impact Report (EIR) No. 617 for the JWA Settlement Agreement Amendment Project, certified by the Board on September 30, 2014, which adequately addressed the

effects of the proposed action. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project, which was not known, or could not have been known, when the Final EIR No. 617 was certified, has become known; therefore, no further environmental review is required.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Plan Year 2023 Commercial Carrier and Commercial Cargo Carrier Capacity Allocation
Attachment B - Plan Year 2023 Commuter Carrier Capacity Allocation

ATTACHMENT A
Plan Year 2023
Commercial Air Carrier and Commercial Cargo Carrier Capacity Allocation
(Effective 1/1/23)

JOHN WAYNE AIRPORT: PLAN YEAR 2023											
Commercial Air Carrier and Commercial Cargo Carrier ADD, Seat Capacity, and RON Allocations											

CARRIER	CLASS A CAPACITY					CLASS PE CAPACITY	CLASS E SEAT CAPACITY		TOTAL SEAT CAPACITY	RON SPACES	
	REGULAR CLASS A ADDs	REGULAR INTERNATIONAL A CLASS A ADDs	COUNTY-CONTROLLED CLASS A ADDs	SUPPLEMENTAL CLASS A ADDs	TOTAL CLASS A ADDs		REGULAR CLASS PE ADDs	CLASS E SEAT CAPACITY		APPROX CLASS E ADDs equiv.	Gate
Aeromexico			1		1				121,180		
Air Canada		1			1				123,370		
Alaska / Horizon ¹	15				15		507,972	9	2,080,500	3	1
Allegiant	3				3				381,060		
American	18			1	19				2,254,240	2	3
Breeze			2		2				183,960		
Delta/WestJet	10				10		84,680	1	1,387,000	4	
FedEx ²	0.726				0.726						
Frontier	3			1	4				543,120		
Southwest	17	2		1	20	14	1,003,020	10	4,715,800	6	2
Spirit	3			1	4				531,440	1	
United ³	17			1	18		113,179	2	2,177,552	4	2
UPS ⁴	0.603				0.603						
TOTALS:	87.329	3	3	5	98.329	14	1,708,851	22	14,499,222	20	8

Notes:

¹Alaska affiliate SkyWest will operate Class E Seat Capacity and one (1) Gate position.

²FedEx was allocated 265 departures for PY 2022. $265/365 = 0.726$ of one (1) Class A ADD.

³United affiliate SkyWest will operate Class E Seat Capacity.

⁴UPS was allocated 220 departures for PY 2022. $220/365 = 0.603$ of one (1) Class A ADD.

ASSOCIATED OPERATING GROUPS - Individual Carrier Operations Proposal											
Alaska ¹	12				12		258,312	5	1,664,400	3	1
Horizon	3				3		249,660	4	416,100		
Delta	8				8				1,194,280	4	
WestJet	2				2		84,680	1	192,720		

ATTACHMENT B
Plan Year 2023
Commuter Carrier Capacity Allocation
(Effective 1/1/23)

JOHN WAYNE AIRPORT: PLAN YEAR 2023
Commuter Carrier Passenger and RON Allocations

CARRIER	2023 PASSENGER CAPACITY	2023 RONs
	PASSENGERS ALLOCATED	RON SPACES
Skywest	46,444	
Delux	228,082	3
Southern Airways	9,764	1
TOTALS:	284,290	4