1976 Aviation Noise Abatement Policy

The following are selected excerpts from the subject policy which address the responsibilities of state and local governments, local elected officials, and airport proprietors in the abatement of aircraft noise. Key passages within these excerpts that may be most useful in encouraging local entities to fulfill their noise mitigation responsibilities have been highlighted. Each passage is preceded by the title of the section from which it was excerpted to aid in locating it within the full text of the policy document. The full text is available on the AEE website at http://www.aee.faa.gov/noise/index1.html. Hard copies are also available from AEE-100.

PART ONE: INTRODUCTION AND SUMMARY OF AVIATION NOISE ABATEMENT POLICY

I. INTRODUCTION

Those who anticipate a complete federal solution to the aircraft noise problem misunderstand the need for federal, local and private interaction. ***The primary obligation to address the airport noise problem always has been and remains a local responsibility.*** Consequently, we have also set forth what we believe to be the legal and proper responsibilities of the airport proprietors, air carriers and other aircraft operators, aeronautical manufacturers, state and local governments, and private citizens. The full benefit of a federal plan of action will be realized only if complementary action is taken by all these participants.

Local capability to plan and take action will be enhanced by a clearer understanding of what the federal government intends to do. As the federal government reduces cumulative noise exposure by controlling the source of noise, so must local governments and airport proprietors, with federal financial assistance in some instances, acquire land ***and assure compatible land use in areas surrounding the airport*** in order to confine severe noise exposure within the boundaries of the airport and to minimize the impact of noise beyond those boundaries.

II. AVIATION NOISE ABATEMENT POLICY

A. Basic Policy Principles

Because aircraft noise adversely affects a significant portion of the nation's population, a nationwide commitment, involving federal, local and private resources, is required to reduce the impact of aviation noise on the people who live in areas surrounding airports.

Public understanding is essential to an effective program to reduce aircraft noise so that we do not raise the expectations of airport neighbors for noise reductions beyond the levels which technology and reasonable cost-effectiveness make possible.

Each of the participants in the noise abatement effort - the airport users, aircraft manufacturers, the airport proprietors, federal, state and local governments, and residents in communities surrounding airports - must take specific steps that are essential in reducing the number of people adversely affected by noise and the severity of the effect on all people.

Planning and acting in coordination, each of these parties should move toward the goal of confining severe aircraft noise exposure levels around U.S. airports to the areas included within the airport boundary or over which the airport has a legal interest, and of reducing substantially the number and extent of areas receiving noise exposure levels that interfere with human activity.

B. Authorities and Responsibilities Under the Policy

The ***Federal Government*** has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning

and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

Airport Proprietors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

State and Local Governments and Planning Agencies must provide for land use planning and development, zoning, and housing regulation that will limit the uses of land near airports to purposes compatible with airport operations. '

The ***Air Carriers*** are responsible for retirement, replacement, or retrofit of older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

Air Travelers and Shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the adverse environmental consequences of a service or product should be reflected in its price.

Residents and Prospective Residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. ***Prospective residents of areas impacted by airport noise thus should be aware of the effect of noise on their quality of life and act accordingly.***

C.4. Airport Noise Policy

To bring about further relief from excessive aircraft noise, ***airport proprietors are encouraged to develop aggressive noise abatement programs for their airports. The FAA will assist proprietors in attaining their noise abatement goals*** and will advise them on how their proposed plans affect the overall air transportation system.

E. Local Actions

While federal action will form the basis of our program, substantial local action will be necessary to complement the noise reduction actions of the federal government and air carriers. Since a federal program would be significantly less effective without commensurate local actions, we have delineated those actions we believe local authorities should take.

The FAA will encourage ***airport proprietors, who are legally responsible for the effect of aircraft noise on the surrounding community***, to assess their particular noise problem and, where local authorities determine that there is a significant problem, to develop an action plan to reduce the impact of noise. That ***action plan should include a program to ensure maximum land use compatibility with airport operations*** both by the acquisition of easements or other rights in the use of land or airspace and by encouraging local governments to adopt and enforce zoning or other land use controls. It should also address other actions that may be taken, such as the establishment of a formal noise abatement runway system, control of ground operations, and preferential arrival and departure routes. The proprietor may wish to propose to the FAA special landing and takeoff procedures to deal with any unique conditions around his airport.

In addition, state and local governments with jurisdiction over property adjacent to airports must take action of their own, preferably in cooperation with the local airport proprietor. ***State and local governments are directly and uniquely responsible for ensuring that land use planning and zoning and land development activities in areas surrounding airports are consistent with the objective of ensuring land use that is compatible with present and projected aircraft noise exposure in the area. Construction standards for new buildings should ensure appropriate insulation from aircraft noise***, and programs to insulate existing public and residential buildings should be advanced where needed.

State and local governments also should require that appropriate notice of airport noise exposure be provided to the purchasers of real estate and to prospective residents in areas near airports to ensure awareness of the nature of the airport environs.

PART TWO: ANALYSIS OF THE NOISE PROBLEM, LEGAL FRAMEWORK, AND DESCRIPTION OF THE FEDERAL ACTION PROGRAM

II. LEGAL FRAMEWORK

B. Legal Responsibilities of State and Local Governments

While the federal government's exclusive statutory responsibility for noise abatement through regulation of flight operations and aircraft design is broad, the noise abatement responsibilities of state and local governments through exercise of their basic police powers are circumscribed....

There remains a critical role for local authorities in protecting their citizens from unwanted aircraft noise, principally through their powers of land use control. ***Control of land use around airports to insure that only compatible development may occur in noise-impacted areas is a key tool in limiting the number of citizens exposed to noise impacts, and it remains exclusively in the control of state and local governments.*** Occasionally, it is a power enjoyed by individual airport operators; some operators are municipal governments that can impose appropriate land use controls through zoning and other authority. But even where municipal governments themselves are operators, the noise impacts of their airports often occur in areas outside their jurisdiction. Other police power measures, such as requirements that noise impacts be revealed in real estate transactions, are also available to them. Finally, ***local governments have legal authority to take noise impacts into account in their own activities, such as their choice of location and design for new schools, hospitals, or other public facilities, as well as sewers, highways and other basic infrastructure services that influence land development.***

C. Legal Responsibilities of Airport Proprietors

The responsibilities of state and local governments as airport proprietors are far less restricted. Under the Supreme Court decision in Griggs v. Allegheny County, 369 U.S. 84 (1962), ***proprietors are liable for aircraft noise damages resulting from operations from their airport.*** The proprietor, the court reasoned, planned the location of the airport, the direction and length of the runways, and has the ability to acquire more land around the airport. From this control flows the liability, based on the constitutional requirement of just compensation for property taken for a public purpose. The Court concluded: "Respondent in designing the Greater Pittsburgh Airport had to acquire some private property. Our conclusion is that by constitutional standards it did not acquire enough," The role of the proprietor described by the Court remains the same today.

But the proprietor's responsibilities do not end there. A three judge district court observed in Air Transport Association v. Crotti, 389 F. Supp. 58 (N.D. Cal., 1975):

> "***It is now firmly established that the airport proprietor is responsible for the consequences which attend his operation of a public airport***; his right to control the use of the airport, is a necessary concomitant, whether it be directed by state police power or by his own initiative.... That correlating right of proprietorship control is recognized and exempted from judicially declared federal preemption by footnote 14 [of the Burbank opinion] . Manifestly, such proprietary control necessarily includes the basic right to determine the type of air service a given airport proprietor wants its facilities to provide, as well as the type of aircraft to utilize those facilities...."

The power thus left to the proprietor - to control what types of aircraft use its airports, to impose curfews or other use restrictions, and, subject to FAA approval, to regulate runway use and flight paths, is not unlimited. Though not preempted, the proprietor is subject to two important Constitutional restrictions. He first may not take

any action that imposes an undue burden on interstate or foreign commerce and, second may not unjustly discriminate between different categories of airport users.

These limitations on the proprietor's control over the use of the airport have not been addressed by the Supreme Court, and it remains unclear the extent to which Constitutional limitations would prevent some of the restrictions that have been imposed or proposed by proprietors in recent years.

Our concept of the legal framework underlying this policy statement is that proprietors retain the flexibility to impose such restrictions if they do not violate any Constitutional proscription. We have been urged to undertake - and have considered carefully and rejected - full and complete federal preemption of the field of aviation noise abatement. ***In our judgment the control and reduction of airport noise must remain a shared responsibility among airport proprietors, users, and governments.***

III. FEDERAL RESPONSE

D. Protecting the Airport Environment

The variety of airports in the United States demonstrates that an airport noise reduction strategy cannot be completely generalized. ***The problem must be approached on an airport-by-airport basis, and all levels of government and the private sector should act with the recognition that solutions to the noise problem must be designed to meet the needs of a particular airport environment.***

1. The Airport Proprietor's Responsibility

Substantial benefits will be achieved through federal actions to abate source noise and control operational flight procedure and airspace, but much of the noise problem is airport-specific and must be addressed by individual proprietors. ***Noise impact at any airport is in part due to local decisions on airport location, continuation of airport operations on a particular site, the layout and size of and airport and the purchase of buffer areas for noise abatement purposes. It is local decision-making that permits residential development near an airport.*** For these reasons, the Supreme Court concluded that proprietors are liable for aircraft noise damages. In addition, airport proprietors, particularly those that are public agencies, generally encourage more service to their airports in Civil Aeronautics Board route proceedings.

The need for local action is apparent. Without effective land use planning, the implementation of land use plans and zoning, the benefits achievable from federal source noise reduction requirements could be greatly reduced. Where land use controls have not been imposed, the need for substantial airport land acquisition has increased, and as aircraft operations increase, the need for land acquisition as well as its cost will rise unless source noise levels are reduced.

The airport proprietor is closest to the noise problem, with the best understanding of both local conditions, needs and desires, and the requirements of the air carriers and others that use his airport. ***The proprietor must weigh the costs the airport and the community must pay for failure to act***, and consider those costs against any economic penalties that may result from a decision to limit the use of the airport through curfews or other restrictions for noise abatement purposes.

FAA officials have and will continue to work with and assist airport operators and representatives of communities affected by airport noise to encourage the development of compatible land use controls. ***What constitutes appropriate land use control action depends on the proprietor's jurisdiction to control or influence land use.*** This, of course, varies with airport location. Almost all airport proprietors, however, are public-agencies with a voice in the affairs and decisions of their respective communities. In some instances they have land use control jurisdiction and are required to document how they will exercise it before receiving federal airport development funds. In other instances, where they lack such direct control, before receiving federal airport development funds they are required to demonstrate that they have used their best efforts to assure proper zoning or the implementation of other appropriate land use controls near the airport and will continue to do so. ***Although the airport proprietor may not have zoning authority, he is often the local party in the best position to assess the need for it and to press the responsible officials into action.***

2. State and Local Government Responsibility

State and local governments are directly and uniquely responsible for ensuring that land use planning, zoning, and land development activities in areas surrounding airports is compatible with present and projected aircraft noise exposure in the area. They should work closely with airport proprietors in planning actions to be taken in confining serious aircraft noise exposure to within the airport boundary and reducing the number of people seriously affected by airport noise.

State and local governments should support airport land use acquisition programs developed by airport proprietors. As federal noise source regulations shrink the contours of cumulative noise exposure, local governments concurrently should develop complementary land use plans preventing residential development and other incompatible land use in areas adjacent to the airport. Now that the federal government has defined a program extending the application of Part 36 standards, the local authorities will be able to plan effectively on the basis of a reasonable set of assumptions about the shrinkage in noise contours that will occur as a result of the federal action.

State and local governmental agencies can improve the insulation of housing, schools, community facilities, institutions providing health services and public buildings in areas exposed to serious airport noise....

Where appropriate, state and local governments should consider the development of new airport sites so that dense population areas will not be exposed to excessive noise and develop the necessary ground transportation to make them accessible. ***They should also require that notice of airport noise exposure be given to the purchasers of real estate and to prospective residents in areas near airports so that they will be aware of the problem.*** Finally, they should support improvements at existing airports which would help reduce the noise impact on surrounding communities.

3. Federal Support for Airport Proprietor and Local Government Noise Abatement Activities

In developing an airport noise control plan, the airport proprietor may wish to consider the following categories of action:

a. Actions that the airport proprietor can implement directly:

(1) location of engine run-up areas;

(2) time when engine run-up for maintenance can be done;

(3) establishment of landing fees based on aircraft noise emission characteristics or time of day.

b. Actions that the airport proprietor can implement directly if he has authority, or propose to other appropriate local authorities:

(1) plan and control of land use adjacent to the air port by zoning or other appropriate land use controls, such as utility expenditures and the issuance of building permits;

(2) enact building codes which require housing and public buildings in the vicinity of airports to be appropriately insulated; and

(3) require appropriate notice of airport noise to the purchasers of real estate and prospective residents in areas near airports.

c. Actions that the airport proprietor can implement directly in conjunction with other appropriate local authorities and with financial assistance from the FAA, where appropriate:

(1) acquire land to insure its use for purposes compatible with airport operations;

(2) acquire interests in land, such as easements or air rights, to insure its use for purposes compatible with airport operations;

(3) acquire noise suppressing equipment, construction of physical barriers, and

landscape for the purpose of reducing the impact of aircraft noise; and

(4) undertake airport development, such as new runways or extended runways, that would shift noise away from populated areas or reduce the noise impact over presently impacted areas.

d. Actions that the airport proprietor can propose to FAA for implementation at a specific airport as operational noise control procedures:

(1) a preferential runway use system;

(2) preferential approach and departure flight tracks;

(3) a priority runway use system;

(4) a rotational runway use system;

(5) flight operational procedures such as thrust reduction or maximum climb on takeoff;

(6) higher glide slope angles and glide slope intercept altitudes on approach; and

(7) displaced runway threshold.

e. Actions an airport proprietor can establish, after providing an opportunity to airport users, the general public and to FAA to review and advise:

(1) restrictions on the use of or operations at the airport in a particular time period or by aircraft type, such as:

(a) limiting the number of operations per day or year;

(b) prohibiting operations at certain hours - curfews;

(c) prohibiting operation by a particular type or class of aircraft; and

(2) any combination of the above.

f. Actions an airport proprietor can propose to an airline:

(1) shifting operations to neighboring airports.

(2) rescheduling of operations by aircraft type or time of day.

The existence, operation and development of an airport provides a service to and is interrelated with both the local community and airport users. These are also the parties who would be most directly affected by the airport operator's noise control plan. ***We therefore consider it vital that these parties have the opportunity to take part in the planning process.*** As a condition of FAA noise abatement planning grants, the airport proprietor will be required to provide for reasonable public notice of the plan and provide an opportunity for public participation in the development of the proposed plan. Public notice should describe the plan, the actions proposed, the reasons why these actions are proposed, alternative courses of action considered and why these alternatives were rejected. ***The FAA also encourages other means of involving the public, both formal and informal, to ensure meaningful public participation in the process.***

The FAA will maintain communications with all airports involved in noise abatement planning -- whether or not FAA-funded -- and provide technical advice on the current state-of-the-art in airport noise reduction planning methods that have been successfully used throughout the country. This will include technical information regarding noise reduction and land use planning and guidance on procedures that airports may choose to consider in developing their plans....

CONCLUSION

Aircraft noise abatement is a complex and controversial issue. In the wealth of information about the subject and midst the labyrinth of jurisdictional responsibilities, there are a few simple thoughts that should not be forgotten. In a society in which we are making rapid strides to improve the quality of life for all of our people, the continuing annoyance and irritation of excessive aircraft noise is an unwarranted intrusion upon the lives of some six million Americans. ***The federal government remains committed to taking all technologically feasible and economically reasonable actions to reduce excessive aircraft noise at its source and,***

working with airport proprietors, to reduce its impact on people.

It is clear, however, that the only successful attack that can be launched on this problem is one that involves the cooperative participation of all levels of government--state, federal and local--as well as airport operators, air carriers, aeronautical manufacturers, and airport neighbors. Only if each of these parties performs all the functions for which it is uniquely suited will we achieve significant and lasting progress in reducing both the number of people exposed to serious levels of aircraft noise and the severity of noise exposure for each and every American.

Although federal action to reduce the noise levels of operating aircraft has been long in coming, we hope that the time has enabled us to develop a policy which will work and will result in less noise exposure over the longer term as well as provide immediate relief. By the actions set forth in this policy, including those directed by the President, we are exercising those federal responsibilities that the Congress has required of us. We have set forth a federal action plan for the future so that other essential parties in the noise reduction effort can take complementary action and make their plans with a clear understanding of what the federal government has done and intends to do. ***Finally, we have set forth what we believe to be the responsibilities of other parties-airport operators, industry and local government-since the effectiveness of the federal action we take today is contingent on what these other parties do.***

We thus invite these other parties to consult with us about their plans and proposals, to suggest innovative ways of meeting the noise problem in their communities, and to tell us how we can do our job more effectively. In turn, ***we will not hesitate to advise local governments and airport proprietors that they must exercise control over land use development and acquire additional land around airports to ensure that the national objective of confining severe-aircraft noise to within the airport boundary is achieved. Nor will we hesitate to inform the air carriers and aeronautical manufacturers what this policy requires of them.***

Working together, in the spirit of close cooperation and open communication, we will bring about quieter skies for all American citizens.