FAA Policy on Part 150 Approval of Noise Mitigation Measures

An Overview

FAA issued a policy on March 27, 1998, on the 14 CFR Part 150, Airport Noise Compatibility Program, which limits approval of remedial mitigation measures, e.g., soundproofing, property acquisitions, and relocation, etc., to land uses that were in place as of October 1, 1998. Approval of measures to address potential new noncompatible development after October 1, 1998, is limited to preventive types of noise measures, such as zoning, subdivision regulation, building codes, and similar land use and/or building controls. This policy effectively limits Federal funding for implementation of noise compatibility measures in a similar way when Part 150 approval is a prerequisite for funding. The objective is to strongly encourage preventive actions where there are currently no noncompatible land uses and to limit remedial actions and dollars to those uses which are already noise impacted. Note that 14 CFR Part 161 severely limits the use of restrictions on airport operations for noise purposes.

Background:

FAA had found that in spite of some 192 Noise Compatibility Programs (NCP's) having been approved under the Part 150 Program, and with many of them having been in place for a decade or more, relatively little implementation of the zoning or land use control elements of the NCP's had occurred. This was especially evident in local jurisdictions that were not the airports' sponsors. That is to say, in many places new noncompatible uses were being instituted almost as quickly as the previous ones were being removed.

An independent study identified that the primary problem is that jurisdictions in the noise impact area that are not the airport sponsors are continuing to allow new noncompatible land uses to be established. The ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operator's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contributed to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use control authority within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. In some locations, local land use control jurisdictions and airport operators have not developed cooperative relationships, the lack of which impedes appropriate land use compatibility planning. Further, some local jurisdictions are not fully aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be worsened by the normal turnover of leadership in local government. These conditions could be improved through greater efforts by all involved parties to communicate and inform each other

about the nature of aviation noise and of the effective preventive and remedial actions available to local jurisdictions to assure long-term compatible land use.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas, land use control changes are not considered to have the ability to change substantially the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development. Therefore, a zoning change is viewed as limiting development opportunities and diminishing the opportunities for tax revenues.

In some cases, zoning for compatible land use has met with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights and that they deserve monetary compensation for any potential property devaluation. Further, basic zoning doctrine demands that the individual land parcels be left with viable economic value, i.e., be zoned for a use for which there is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a "taking" of private property for public use under the Fifth Amendment to the U.S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be of sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's Part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to proposals by the airport operator to expand the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance programs to mitigate noise impacts that they were unable to prevent in the first place. Over a relatively short period of time, the distinctions blur between what is "new" and what is "existing" residential development with respect to airport noise issues.

FAA has therefore issued a final policy, which establishes a distinction between remedial and preventive noise mitigation

measures proposed by airport operators and submitted for approval by the FAA under applicable noise compatibility planning regulations. Implementation of this policy also results in certain new limitations on the use of Airport Improvement Program (AIP) funds for remedial noise mitigation projects. The proposed policy was published in the Federal Register on March 20, 1995 (60 FR 14701), and public comments were received and considered.

The Policy:

As of October 1, 1998, the FAA will approve remedial noise mitigation measures under Part 150 only for noncompatible development which exists as of that date. Noncompatible development that potentially may occur on or after October 1, 1998, may only be addressed in Part 150 programs with preventive noise mitigation measures. This policy will affect the use of AIP funds to the extent that such funding is dependent on approval under Part 150. Approval of remedial noise mitigation measures for bypassed lots or additions to existing structures within noise impacted neighborhoods; additions to existing noise impacted schools or other community facilities required by demographic changes within their service areas; formerly noise compatible uses that have been rendered noncompatible as a result of airport expansion or changes in airport operations; and other reasonable exceptions to this policy on similar grounds must be justified by airport operators in submittals to the FAA and will be considered by the FAA on a case-by-case basis. This policy does not affect AIP funding for noise mitigation projects that do not require Part 150 approval, that can be funded with PFC revenue, or that are included in FAA-approved environmental documents for airport development.

Passenger Facility Charges (PFCs)

The Aviation Safety and Capacity Expansion Act of 1990 grants a commercial service airport the authority to impose a passenger facility charge (PFC) to assist in financing airport capital development upon approval of the Secretary of Transportation. Approval for an airport to impose a PFC does not require the airport sponsor to comply with those assurances and obligations contained in AIP grant agreements.

The purposes of this financing mechanism are to:

- Preserve or enhance the capacity, safety, or security of the national transportation system.
- Reduce Noise Impacts resulting from an airport that is part of the system.
- Furnish opportunities for enhanced competition between or among air carriers.

PFCs may be used for airport noise compatibility measures such as sound insulation that are eligible for federal financial assistance, even if the measures have not been approved as part of a formal Part 150 Noise Compatibility Program.

Other Funding Sources

There are other funding sources available for compatible land use planning that local municipalities and airports may want to consider investigating. Many airport proprietors and state aviation agencies are capable of financing various compatible land use projects.