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Overview of Legal Considerations Applicable to John Wayne Airport

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Today's Discussion Topics

- Overview of Airport Noise and Capacity Act of 1990 (“ANCA”)
- Impact of ANCA on Prior Agreements and Local Regulations at John Wayne Airport
- Questions

Overview of Airport Noise and Capacity Act of 1990

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Legal Background

- Prior to 1990, disjointed and inefficient patchwork of local noise and access restrictions affected public airports
 - Public airport – airport that has received federal funds
 - Negatively impacted commercial air travel
- In 1990, Congress passes ANCA to provide a uniform standard for public airport access restrictions
 - Implemented through 14 C.F.R. Part 161
- Bottom line of ANCA: All conduct that has effect of restricting public access to airport must be approved by FAA

ANCA Applies to Nearly All Restrictions

- ANCA does not apply to:
 - Restrictions on Stage 1 or non-stage rated aircraft (which are largely extinct)
 - FAA-imposed operational procedures
 - Safety based restrictions
 - *E.g.*, ban on skydiving or flight training at a busy airport
 - Voluntary restrictions
 - *E.g.*, a non-binding agreement to honor a curfew
 - Weight-based restrictions
 - *E.g.*, limitations on aircraft using an airport if the aircraft would damage the runway/tarmac
 - Grandfathered noise restrictions and amendments to pre-ANCA restrictions that do not reduce or limit aircraft operations or affect aircraft safety

Procedure to Seek FAA Approval of Restriction

- Process for airport sponsor to pursue a Stage 2 restriction (helicopters only)
 - Part 161 study
 - FAA accepts study and publishes notice
 - 6-month public comment / waiting period
- Process for an airport sponsor to pursue a Stage 3 restriction (jets and new/re-certified helicopters)
 - Notice of proposed restriction
 - 45-day public comment period
 - Application to FAA with analysis and evidence
 - FAA deems application complete
 - FAA publishes notice; another public comment period
 - FAA must approve or deny the complete application within 180 days of submission

Procedure for Airport Sponsor to Pursue Stage 2 Restriction

- Required elements of the Part 161 study for Stage 2 restrictions:
 1. Cost-benefit analysis of the proposed restriction
 - Operational impacts
 - Costs to all affected entities
 - Benefits of noise reduction
 2. Description of alternative restrictions
 - Hours, types of aircraft
 3. Description of alternative measures considered that do not involve aircraft restrictions
 - Land use planning, soundproofing
 4. Comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction

Procedure for Airport Sponsor to Pursue Stage 3 Restriction

- Typical components of a Stage 3 application:
 1. Background / need for restriction
 2. Opportunities for public comment
 3. Description of proposed restriction
 4. Operations forecasts
 5. Noise compatibility planning
 6. Noise analysis
 7. Cost-benefit analysis
 8. Review of six “statutory conditions for approval”
- Supported by analysis and evidence

Stage 3 Restriction – Statutory Conditions

- Condition 1: Restriction is reasonable, nonarbitrary, and nondiscriminatory
 - Will there be a measurable decrease in noise?
 - Will there be a significant impact on airport activity?
 - Are there feasible alternatives – allow limited nighttime operations, preferential runway, voluntary measures?
 - Will the noise restrictions affect all users equally?
- Condition 2: Restriction does not create an unreasonable burden on interstate or foreign commerce
 - How much will it cost operators to comply – retrofit aircraft, lost profits?
 - How much would it cost to implement nonaircraft alternatives – land use planning, soundproofing, noise easements?
 - What are the benefits – property values, airport revenues, quality of life?

Stage 3 Restriction – Statutory Conditions (con't)

- Condition 3: Restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace
 - Are there any safety implications?
- Condition 4: Restriction does not conflict with U.S. law
 - Any conflicts with federal grant assurances?
- Condition 5: An adequate opportunity has been provided for public comment on the restriction
 - How many public meetings, working sessions, comments?
- Condition 6: Restriction does not create an unreasonable burden on national aviation system
 - Will the restriction increase congestion – at SNA? LAX? LGB?

Track Record of Part 161 Applications

- Only one successful ANCA Stage 2 restriction— Naples, Florida
- No successful Stage 3 restrictions
- Only two Stage 3 applications have been deemed complete – FAA then denied both, for failure to meet the six conditions
 - LAX: 9 years, \$3 million
 - Burbank: 10 years, \$7 million
- In total, of the 7 Part 161 applications filed since 1990:
 - 1 approved
 - 2 denied
 - 4 abandoned
- All other formal noise restrictions were grandfathered or voluntary

Track Record of Part 161 Applications (con't)

| Airport | Requested Restrictions | Duration | Terminating Event |
|---------------------------------------|-------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------|
| Burbank-Glendale-Pasadena, CA | Mandatory curfew on all aircraft. | 10 yrs | Application denied. |
| Kahului Airport, HI | Nighttime ban of Stage 2 aircraft. | 4 yrs | Application abandoned. |
| Los Angeles International Airport, CA | Nighttime ban on aircraft departures over residential communities to the east. | 9 yrs | Application denied. |
| Minneapolis-St. Paul, MN | Nighttime ban of Stage 2 aircraft. | 2 yrs | Application abandoned. |
| Minneapolis-St. Paul, MN | Ban on aircraft weighing more than 75,000 pounds and exceeding Stage 3 noise limits. | 1 yr | Application abandoned. |
| Naples Municipal, FL | Ban on Stage 2 aircraft weighing less than 75,000 pounds. | 5 yrs | Application successful, but FAA ruled that the restriction violated federal grant assurances; lengthy litigation. |
| San Francisco International, CA | Extension of nighttime curfew on Stage 2 aircraft weighing more than 75,000 pounds. | 2 yrs | Application abandoned. |
| San Jose International, CA | Restriction of Stage 2 aircraft departures to limited hours. | 2 yrs | Application not submitted because study concluded that costs outweighed benefits. |
| Van Nuys, CA | Phase out of Stage 2 aircraft, extended curfew hours, phase out of helicopter operations. | 6 yrs | Application not submitted because study concluded that costs outweighed benefits. |
| Ft. Lauderdale, FL | Requested opinion on restriction that would exempt Stage 3 aircraft. | 1 yr | Application not submitted; voluntary curfew in place. |

Common Issues Identified by FAA

- Sampling of FAA responses to prior Part 161 applications:
 - Less restrictive alternatives should be studied
 - Restrictions may increase airspace congestion elsewhere
 - Specifically exempting Stage 3 aircraft may unjustly discriminate against Stage 2 aircraft
 - Rigorous scrutiny of cost-benefit analysis (e.g., costs to all affected entities; number of people who benefit)
 - Applications lacked sufficient detail in a variety of areas

Impact of ANCA on John Wayne Airport

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Impact of ANCA on Prior Agreements

- In 1985, The County of Orange and the City of Newport Beach entered into a settlement agreement regarding the development and operation of aircraft at John Wayne Airport (“SNA”)
 - This settlement predated ANCA and is thus grandfathered
- Supplemental stipulations to the settlement do not implicate ANCA so long as the amendments do not reduce or limit aircraft operations or affect aircraft safety
- However, any attempt to supplement the settlement with provisions (e.g., noise limits, enplanement limits, aircraft prohibitions) that are more restrictive than the original 1985 standards will be prohibited by ANCA

1985 Settlement Agreement

- The Settlement and subsequent stipulations largely concern commercial aircraft and generally do not apply to general aviation operations
 - General aviation – refers to all aircraft not “operated as a federally certificated air carrier at John Wayne Airport under a current Certificated Passenger Airline Lease or Operating Agreement granted by the Orange County Board of Supervisors” (e.g., all aircraft other than airlines)
 - General aviation aircraft are allowed to operate at SNA 24 hours per day as long as they comply with the applicable noise limits and other regulations of the General Aviation Noise Ordinance (GANO)
- There is no mechanism for the County to impose mandatory curfews on general aviation operations beyond what is already contained in the GANO

GANO

- Imposes SENEL limits on general aviation operations
 - SENEL - describes the total acoustical energy, in decibels, of an individual noise event compressed into a reference duration of one second
- More restrictive at night (2200 – 0700), but permits 24 hour operations
- Generally will not restrict operations by jet aircraft

Impact of ANCA on GANO

- Similar to ANCA's impact on the settlement, the GANO must maintain status quo on airport access
- GANO – does not impose curfews or mandatory restrictions on an overwhelming majority of general aviation aircraft
- Local regulations are preempted by federal law, including ANCA
- The only published procedure to introduce restrictions in Part 161

Questions?

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