



U.S. Department
of Transportation
**Federal Aviation
Administration**

ATLANTA AIRPORTS DISTRICT OFFICE

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January 25, 2008

Dr. Thomas E. Nissalke, Ph.D.
Director of Environmental and Technical Services
City of Atlanta/Department of Aviation
P. O. Box 20509
Atlanta, Georgia 30320-2509

Dear Dr. Nissalke:

RE: Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia
Noise Compatibility Program Record of Decision

The Federal Aviation Administration (FAA) has evaluated the Noise Compatibility Program for Hartsfield-Jackson Atlanta International Airport contained in the "FAR Part 150 Study Noise Compatibility Program Report" and related documents submitted to this office under the provisions of 49 U.S.C., Section 47504. The recommended Noise Compatibility Program proposed by the City of Atlanta is identified by action element number on page 9-3 of the "FAR Part 150 Study Noise Compatibility Program Report". I am pleased to inform you that the Regional Airports Division Manager has approved seven of the seven proposed action measures in the Noise Compatibility Program in full. The specific FAA action for each Noise Compatibility Program measure is set forth in the enclosed Record of Approval. The effective date of this approval is January 24, 2008. All of the approval actions are more fully explained in the enclosed Record of Approval.

Each airport Noise Compatibility Program developed in accordance with 14 CFR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport operator with respect to which measures should be recommended for action. The FAA's approval or disapproval of 14 CFR Part 150 Program recommendations is measured according to the standards expressed in 14 CFR Part 150 and the Aviation Safety and Noise Abatement Act of 1979, (49 U.S.C. 47501-47507) and is limited to the following determinations:

The Noise Compatibility Program was developed in accordance with the provisions and procedures of 14 CFR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

Program measures relating to the use of flight procedures can be implemented within the period covered by the Program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in 14 CFR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a commitment by FAA to implement specific noise compatibility measures. FAA approval of some measures may require preparation of an environmental assessment. Further, approval of a plan does not commit FAA to financially assist in the implementation of the program nor are all measures covered by the program necessarily eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants should be submitted to the FAA Airports District Office.

Sincerely,



Scott L. Seritt, Manager
Atlanta Airports District Office

1 Enclosure

cc:

Mayor Jack Longino, City of College Park, Georgia
APP-400
ASO-610
ASO-7

FEDERAL AVIATION ADMINISTRATION

RECORD OF APPROVAL
FAR PART 150
NOISE COMPATIBILITY PROGRAM

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT
ATLANTA, GEORGIA

Regional Counsel, ASO-7

CONCUR NONCONCUR

Date

Robert B. Chapman

Airports Division Manager
Southern Region

✓

APPROVED DISAPPROVED

1/24/08

Date

RECORD OF APPROVAL HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT ATLANTA, GEORGIA

The approvals listed herein include approval of actions that the airport recommends be taken by the Federal Aviation Administration (FAA). It should be noted that these approvals indicate only that the actions would, if implemented, be consistent with the purposes of 14 CFR Part 150. These approvals do not constitute decisions to implement the actions. Later decisions concerning possible implementation of the measures in this ROA will be subject to applicable environmental or other procedures or requirements, including Section 106 of the National Historic Preservation Act (NHPA).

The measures below are summarized as closely as possible to the airport operator's recommendations in the Noise Compatibility Program (NCP) and are cross-referenced to the program. The statements contained within the summarized measures and before the indicated FAA approval, disapproval, or other determination do not represent the opinions or decisions of the FAA.

LAND USE MEASURES

1. Voluntary property acquisition program for eligible single-family residences and multi-family complexes within the 70 DNL contour. This voluntary measure would provide the opportunity for owners and residents of residentially developed property within the high noise areas (2007 NEM 70 DNL and greater) to receive fair market value for their property and relocation assistance. Any residential development that occurred after April 10, 1985 that was within the limits of the 1985 70 and greater DNL contour was constructed with the knowledge of the extent of significant noise exposure and would not be eligible for the acquisition program. (NCP pages 6-1 thru 6-4, 8-2, 9-1, and 9-4; Figures 6-1 and 6-2; Tables 6.1 and 9.2)

FAA Action: Approved for the properties identified in the NCP, Figure 6-2. It is noted the Uniform Act does not consider this type of transaction a "voluntary" program, even though the residents will voluntarily participate under 14 CFR Part 150. Under the Uniform Act, it is termed a "buy out" program because the land use in the neighborhood is being changed (see Measure 2, directly below). Acquisitions are limited to existing non-compatible land uses located within the 70 DNL noise contour of the official NEM ("Noise Exposure Map: 2007"), and consistent with FAA's 1998 remedial mitigation policy (63 FR 16409).

2. The Department of Aviation and political jurisdictions will coordinate regarding redevelopment of lands purchased under the residential acquisition program. The acquisition of residential properties within the 2007 NEM 70 DNL contour would remove properties from the tax rolls. The benefit of this recommendation is to have local

political jurisdictions involved in redevelopment of acquired properties not needed for aviation use. (NCP pages 7-1 thru 7-2; Table 9.2)

FAA Action: Approved. Redevelopment plans must be consistent with Federal grant assurances regarding property values and compatibility with normal airport operations.

3. Voluntary sound insulation program for eligible residential buildings in the 65-70 DNL contours. This voluntary measure will benefit those eligible residences located between the 2007 NEM 65 and 70 DNL contour by providing them the option to be included in the sound insulation program. The benefit would be in gaining a minimum of 5 dB reduction in interior noise. In return for the sound insulation, property owners would be required to sign a "right of flight" easement. To be eligible for sound insulation the structure must be capable of being sound insulated, constructed prior to April 19, 1985 (see Measure 1, above) and was not sound insulated through any previous offering by the Department of Aviation. (NCP pages 6-4 thru 6-7, 8-3; Tables 6.2 and 9.2)

FAA Action: Approved.

4. Voluntary sound insulation program for eligible schools within the 65-70 DNL contours. This program will benefit the schools located between the 2007 NEM 65 and 70 DNL noise contour by providing them the option to be included in the sound insulation program. The benefit would be in gaining a minimum of 5 dB reduction in interior noise. It is estimated that four schools would be eligible. (NCP pages 6-4 thru 6-7, 8-3; Tables 6.2 and 9.2)

FAA Action: Approved.

5. Voluntary sound insulation program for other eligible noise sensitive uses within the 65 DNL and greater contours. This program will benefit other noise sensitive sites located within the 2007 NEM 65 DNL and greater noise contour by providing them the option to be included in the sound insulation program. The benefit would be in gaining a minimum of 5 dB reduction in interior noise. It is estimated that approximately 20 additional sites would be eligible. It is estimated that 3 day care facilities, 16 places of worship, and one health care/retirement center are eligible noise sensitive uses located within the 65-69 DNL limits. (NCP pages 6-4 thru 6-7, 8-3; Tables 6.2 and 9.2)

FAA Action: Approved.

6. Establish Overlay Zones within the 60 DNL and greater. It is recognized that the Department of Aviation has no control over land use and zoning decisions beyond the Airport's boundaries. Land use planning and zoning is the responsibility of local governments. Thus, the overlay zone plan is provided as a framework to local governments proximate to HJAIA that would enable them to provide an equitable and workable method of maintaining (or enhancing) land use compatibility. Local regulations associated with noise overlay zones could limit the development noise sensitive uses; could require new development to incorporate sound insulation into the

design of buildings; could require some form of publication (through avigation easement or notification, for example) advising future buyers as to the existence of aircraft overflights and noise; and/or other measures. The determination as to which of the controls should apply for any given situation is based on the extent of the noise exposure at the proposed development site and would be styled and implemented by the local governments without having to change the underlying structure of their current planning, zoning, and building permit processes. Overlay Zones will protect owners of future residential and other future noise sensitive site development in high noise contour areas. It would provide the same protection afforded existing property owners in terms of sound insulation. It would also notify those acquiring new homes within the moderate noise exposure limits (2012 60-65 DNL) of the existence of overflight and noise exposure prior to the new property being acquired, if deemed appropriate by the local government. (NCP pages 7-1 thru 7-7, 8-4; Figures 7-1, 7-2, and 7-3, Tables 7.1 and 9.2)

FAA Action: Approved.

7. Continuation of the Noise Mitigation Advisory Council (NMAC) during the implementation process. Members of the NMAC include aviation and political jurisdiction interests. The members of the NMAC have been involved throughout the FAR Part 150 Study and it would be beneficial for them to continue to be involved in the implementation of the recommended noise mitigation measures. (NCP pages 8-4 thru 8-5, 9-4; Table 9.2)

FAA Action: Approved.



Federal Aviation Administration

Memorandum

Date: January 24, 2008

From: ATL-ADO

To: ASO-600 (through ASO-601A)

Prepared by: Scott Seritt

Subject: ACTION: Recommendation for Approval

Hartsfield-Jackson Atlanta International Airport; Atlanta, Georgia

Airport Noise Compatibility program (NCP)

On April 10, 2007, the Hartsfield-Jackson Atlanta International Airport (HJAIA) was notified of FAA's determination of compliance of the Noise Exposure Maps under Section 103.(c) of the Aviation Safety and Noise Abatement Act of 1979 ("the Act"), (49 U.S.C., Section 47503). Following the finding that the Noise Exposure Maps were in compliance, we began the formal 180-day review period for the Hartsfield-Jackson Atlanta International Airport's proposed Noise Compatibility Program Update under the provisions of 49 U.S.C., Section 47504. Notice was transmitted to AGC-200 on September 7, 2007, for publication in the Federal Register.

The Southern Region has reviewed and evaluated the proposed Noise Compatibility Program Update and has concluded that it is consistent with the intent of the Act and that it meets the standards set forth in 14 CFR Part 150 for such programs. The standard 14 CFR Part 150 Noise Compatibility Program Checklist was reviewed to ensure that all required items were included in the proposed program. The NCP document and checklist are attached.

The proposed program has been reviewed by the Atlanta Airports District Office. It also was coordinated with Washington Headquarters to determine whether the NCP contained measures that were related to national policy issues. No national policy issues were identified. Notice was published in the Federal Register for the Noise Exposure Map, Receipt of Noise Compatibility Program, and Request for Review.

During the public comment period, the City of College Park, Georgia presented a letter with several comments. Of those comments submitted, two were related to the proposed NCP Update: 1. The HJAIA has failed to consult in any meaningful manner with the neighboring jurisdiction of College Park; and 2. College Park objects to the

proposed intention to acquire seven apartment complexes in College Park. Review of submitted documentation and conversations with HJAIA staff confirm that many coordination meetings (dating back to February 12, 2003 with a scoping meeting attended by the Mayor, City Manager and an additional seven City officials) have been held. Representatives of College Park attended the Noise Mitigation Advisory Council meetings, the Land Use Advisory Committee Meetings, and the Operations Advisory Committee meetings. These committees have been active throughout the course of this study. A Public Information Workshop was held in College Park on December 15, 2003. A Public Hearing was held on October 9, 2006. The Hearing was held at the Airport Marriott and was open to the public during the whole day. All requirements of public participation have been met. Also, the FAA met three times (in March, May, and June of 2007) with the City of Atlanta and the City of College Park, their consultants and their attorneys to discuss their comments. See the attached FAA Response to Comments.

Through the analysis of existing and future noise conditions and direct input from the wide variety of interests involved during the development of the study, a series of operational and land use related measures were identified and evaluated. Of those measures, a voluntary property acquisition for eligible residential uses, including multi-family residences, is recommended within the 70 DNL. Sound insulation will be available to eligible non-compatible land uses within the 65 DNL contour. The Department of Aviation has clarified, and the ADO concurs, that non-compatible land uses that lie within both the 70 and 65 DNL contours will have the option of selecting acquisition or sound insulation for their property. (See attached) This alternative was evaluated and recommended in accordance with 14 CFR Part 150. No other comments were received.

Each proposed action in the Noise Compatibility Program Update was then reviewed and evaluated on the basis of effectiveness and potential conflict with Federal policy and prerogatives. These include safe and efficient use of the Nation's airspace, undue burden on interstate commerce, unjust discrimination and interference with a Federal regulatory compliance schedule (i.e., 14 CFR Part 91, Subpart E).

Our recommendation on each of the proposed actions is described in the attached Record of Approval. Each approved action is described in detail in the HJAIA NCP.



Scott L. Seritt, Manager
Atlanta Airports District Office

2 Attachments

cc:

APP-400 (with attachment)

ASO-7 (with attachment)

Dr. Thomas E. Nissalke, City of Atlanta/Department of Aviation

Mayor Jack Longino, City of College Park, Georgia



Memorandum

U.S. Department
of Transportation

Federal Aviation
Administration

Subject: Disposition of Comments regarding Hartsfield-Jackson International Airport Part 150 Noise Compatibility Program Date: January 24, 2008

From:  Scott Serritt, Atlanta Airport District Office Manager Reply to
Attn. of:

To: Rusty Chapman, Manager, Airports Division, Southern Region, ASO-7

Background

On September 18, 2007, the Federal Aviation Administration (FAA) published notice in the Federal Register announcing FAA's receipt of the City of Atlanta's Part 150 Noise Compatibility Program (NCP) update for Hartsfield-Jackson International Airport (HJIA) and that FAA was accepting comments from the public through November 6, 2007. 72 Fed.Reg. 53,277.

After the public comment period ended, FAA received two (2) letters on behalf of the City of College Park. The first letter, dated November 6, 2007, was from the Mayor of the City of College Park, Jack Longino. The second letter, dated December 4, 2007, was received from the City Attorney for the City of College Park, Mr. Steven M. Fincher. Both of the letters raised concerns with Hartsfield-Jackson International Airport's NCP update.

Although the letters on behalf of College Park were received after the close of the comment period, FAA considered and responded to the issues raised in reviewing the NCP for approval under Part 150. The comments are summarized and addressed below.

City of College Park Comments:

1a). The airport sponsor, City of Atlanta, failed to meaningfully consult the City of College Park about acquisition of apartment complexes located within the City of College Park as required by the Part 150 regulations. In support of this position, the City of College Park contends: b) the City of Atlanta can not rely on the Noise Mitigation Advisory Council (NMAC) and its subcommittees to fulfill the Part 150 consultation requirements; c) HJIA assured College Park that there would be no more acquisition and demolition of any property within College Park without the direct involvement of College Park; d) HJIA proposes to remove a land use without consulting with College Park on the appropriate land use for the re-use/re-development of the affected properties which indicates no consultation occurred; and e) it is inappropriate for the City of Atlanta to undertake land acquisition within the City of College Park without the consent, participation and management of the City of College Park. Each of these elements will be addressed separately as subparts to this comment.

FAA Response:

1a). The consultation requirements for a Noise Compatibility Program are contained in 14 C.F.R. § 150.23(c). Specifically, "each noise compatibility program must be developed and prepared . . . in consultation with FAA regional officials, the officials of the state and of any public agencies and planning agencies whose area, or any portion or whose area, of jurisdiction within the Ldn 65 dB noise contours is depicted on the noise exposure map." 14 C.F.R. § 150.23(c).

The City of Atlanta, the owner and operator of Hartsfield-Jackson International Airport (HJIA), began the process of updating the existing Part 150 NCP for HJIA in 2003. Volume 1, Noise Exposure Maps Report, page 1-2, §1.3. According to the NCP update, in 2003 the City of Atlanta established the Noise Mitigation Advisory Council (NMAC) to serve as the principal forum for coordinating the NCP update with College Park and other local political jurisdictions. Two committees of the NMAC, the Operations Advisory Committee (OAC) and the Land Use Advisory Committee (LUAC), provided technical input for preparation of the NCP update. Noise Exposure Maps Report, page 1-4, §1.4. The Charter of the NMAC states the mission of the NMAC is to assist [the City of Atlanta] with the Part 150 study and to provide a forum for effective communication and coordination with elected officials and local government planning/zoning departments. NCP Update Volume III, Appendix B, B-1. The objectives included providing input and guidance into the development and implementation of Part 150 aircraft operational, land use compatibility alternatives, and mitigation priorities. Id. At B-2. The NCP update indicates the City of College Park was represented on the NMAC, the OAC, and LUAC and attended almost every committee meeting. See generally Appendix G.

The representative of the City of College Park attended the October 27, 2005 NMAC meeting during which the Part 150 consultant presented draft 2003 and 2008 noise exposure maps and the draft recommendations regarding property acquisition and sound insulation were discussed. The maps depicted the apartment complexes as predominately in the 70 DNL contours. See Appendix G, 10/27/05 NMC Meeting Minutes. The minutes indicate that the preliminary recommendation was to identify noise sensitive sites within the 70 DNL+ contour as eligible for voluntary property acquisition. Within the 65-70 DNL contours, noise sensitive sites would be eligible for voluntary sound insulation. See Appendix G, 10/27/05 NMAC Meeting Minutes.

Before the NMAC met on August 3, 2006, the City of College Park and others were provided with copies of the draft NCP update. The draft NCP indicated that approximately 878 residential structures are located in the 70 DNL contour. Of these, five were single family residences and 873 were multi-family unites in seven apartment complexes. The draft recommendations for the NCP update were reviewed during the meeting. Comments were requested from NMAC members by August 11th. The cost of the voluntary property acquisition was estimated at \$43 million during this meeting. See, Appendix G, 8/3/06 NMAC Meeting Minutes.

The City of Atlanta held a public hearing on October 9, 2006. College Park Mayor Jack Longino and two College Park Councilmen attended. Attorney Stephen Fincher also attended although it is not clear in what capacity. The comment period closed on October 23, 2006. However the City of Atlanta agreed to accept comments from the City of College Park until October 30, 2006.

The City of College Park submitted comments dated November 6, 2006 on the draft NCP. In these comments College Park expressed its' desire to participate as an NCP sponsor to facilitate implementation of these measures. College Park also indicated that 90 additional days would be needed to submit further comments. See, Appendix T, NCP Update.

Approximately 120 days later the City of College Park submitted additional comments (dated March 22, 2007). In these comments College Park for the first time expressed strong objections to the draft NCP recommendations to acquire and demolish seven apartment complexes. The City asserted the right to actively consent to, participate in, and manage this measure. See, Appendix T, NCP Update.

As College Park submitted these comments after the close of the comment period, there was no obligation on the part of the sponsor to address them as part of the NCP update under 14 CFR §150.23(e)(7).

In an effort to facilitate resolution of the issues regarding the property acquisition recommendations in the draft NCP, the FAA had three additional meetings with representatives from the City of Atlanta and the City of College Park, March 22, 2007, May 23, 2007, and June 6, 2007.

The opportunities available for College Park to raise objections to multifamily acquisition and consult with the City of Atlanta is further evidenced by College Park's letter to the FAA dated November 6, 2007, and signed by the Mayor of

College Park. In that letter, Mayor Longino states that there were “very high level discussions between the College Park Mayor and Council and the General Manager of HJIA, Ben DeCosta, in which DeCosta clearly heard from our policy makers that we desired no more acquisition and demolition of ANY property within College Park without the direct involvement of College Park and received DeCosta’s personal commitment that no more such acquisitions would occur without the consent of College Park.”

Based on these facts, the City of Atlanta fulfilled the consultation requirements of 14 CFR §150.23(c). The City of College Park was afforded notice and many opportunities to discuss with Atlanta the recommended measure for voluntary acquisition of residences (including apartment complexes) in the 70 DNL contour and for voluntary acquisition or sound insulation of residences in the 65 to 70 DNL contour during the Part 150 NCP update process. (As reflected in the Record of Approval, the sponsor has clarified its intent that the owners of the multifamily residential properties straddling the 65/70 DNL contour have the option of voluntary land acquisition or sound insulation. Five of the seven multifamily apartment complexes fall into this category.) The City of Atlanta consulted with College Park as a member of the NMAC, OAC, and LUAC. The NCP update indicates that College Park had specific notice that the recommendation for voluntary acquisition included apartment complexes as early as October 2005. Since that time the City of College Park has had numerous opportunities to discuss its concerns about this measure in depth with both the City of Atlanta and the FAA.

1b). Reliance on the Noise Mitigation Advisory Council and the Land Use Advisory Committee meetings to fulfill the consultation requirements is inadequate.

FAA Response:

1b). The Part 150 regulations do not specify how the airport sponsor is to meet the consultation requirements under 14 C.F.R. § 150.23(c). However the FAA has guidance that it uses in this area. See FAA’s 1990 “Community Involvement Manual” (http://www.faa.gov/about/office_org/headquarters_offices/aep/planning-toolkit/media/VI.A.pdf). The NCP indicates that the City of Atlanta used the NMAC, LUAC, and OAC as a means to fulfill the Part 150 consultation requirements. The City of College Park was represented on these committees. This approach is consistent with methods the FAA uses to conduct consultation. Based on minutes available from the various meetings this approach afforded all Council and Committee members the opportunity to raise and review their various concerns with Atlanta. The City of College Park was represented on the NMAC, the LUAC, as well as the Operations Advisory Committee.

1c). HJIA assured College Park that there would be no more acquisition and demolition of any property within College Park without the direct involvement of College Park.

FAA Response:

1c). As discussed above in Response to Comment 1a, the City of Atlanta consulted College Park about the measures in the NCP that involve voluntary acquisition of property within College Park. If College Park demonstrates that it is capable of carrying out the projects within its jurisdiction, then it may receive grants to implement those projects. 49 USC § 47504(c)(1), (3). The FAA has been advised that on December 10, 2004, at a meeting between College Park and City of Atlanta, when College Park voiced concerns regarding the ongoing acquisition of property in College Park by City of Atlanta, Mr. Ben DeCosta committed to coordinating with College Park for future land acquisition. Mr. DeCosta specifically stated that he would not purchase property within College Park without the city’s concurrence. However, FAA is aware that Mr. DeCosta has also made a commitment to assist the residents of the communities surrounding the airport that are negatively impacted by airport noise. Approval of the Part 150 NCP update does not foreclose direct involvement of College Park. The NCP update includes a measure to coordinate the re-development of land purchased under the residential acquisition program with affected local political jurisdictions using the NMAC. We expect the City of Atlanta to fulfill this measure. If property owners in College Park elect sound insulation and College Park demonstrates that it is eligible, then it can receive grants to carry out those projects.

1d). The NCP does not include plans for re-use/re-development of the properties nor does it include plans for where tenants will be relocated. HJIA proposes to remove a land use without consulting with College Park on the appropriate land use for the re-use of the affected properties. College Park believes that given the long term use of this property as multi-family residential, the most appropriate continuing use of this property remains multi-family use. This is a municipal planning responsibility that belongs to College Park and highlights why it is completely inappropriate and irresponsible for HJIA to undertake this profound community disruption – enabled by Federal dollars – without the active consent, participation and management of the City of College Park.” The lack of re-use/re-development plans indicates that no consultation occurred.

FAA Response:

1d). See Response to Comment 1a regarding the City of Atlanta's consultation with College Park and Response to Comment 1c regarding coordination of redevelopment of land purchased within College Park. The NCP gives the owner of the affected properties the choice of whether to continue residential use of the property. This is consistent with the airport sponsor's grant obligation to take reasonable steps to assure to restrict the use of land next to the airport to uses that are compatible with airport operations. Compatibility with airport noise at these levels can be achieved by either acquisition or soundproofing. The NCP is also consistent with local land use planning authority of communities as recognized under Part 150.

Part 150 does not require the airport sponsor to include plans for reuse of the properties or plans for where tenants will be relocated in its NCP. However, the NCP update includes a measure to coordinate the re-development of land purchased under the residential acquisition program with local political jurisdictions. In addition, if the airport sponsor implements the NCP measure and acquires residential property, the City of Atlanta must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which requires the airport sponsor to assist displaced individuals in obtaining comparable replacement housing.

1(e). College Park needs to participate as a NCP sponsor so as to facilitate further NCP land acquisition and sound insulation initiatives. HJIA is not the most efficient nor the most appropriate entity to be engaged in NCP property acquisition within the jurisdictional boundaries of College Park consistent with federal grant obligations.

FAA Response:

1e). If determined capable by the FAA, then College Park may receive grants to carry out projects in this approved NCP update, either from the FAA directly or from the City of Atlanta. 49 U.S.C. § 47504(c)(1), (c)(3). If College Park applies for a grant then FAA must determine, among other things, whether the issuance of grants directly to College Park would be reasonably consistent with the program and achieving the goals of airport noise compatibility planning under 49 U.S.C. § 47501 et seq., as implemented by 14 C.F.R. Part 150 and the national priority system for funding.

2. The NCP process was inadequate because FAA local officials have prejudged the approval of the NCP's multifamily residential acquisition. In support of this position, the City of College Park contends: a) there have been past purchases by City of Atlanta of multifamily structures; b) the City of Atlanta has engaged in negotiations to purchase the Wynterbrook Apartment Complex since 2002; and c) an April 2007 Federal Register notice was "misleading" and part of a secretive process to circumvent known objections by College Park, with an approval by the FAA within five business days.

FAA Response:

2). Local FAA officials have not prejudged the approval of the NCP's voluntary multifamily residential acquisition measure. FAA considers the factors contained in 14 C.F.R. § 150.35 in determining whether or not a specific NCP measure should be approved or disapproved.

2a). The FAA has allowed purchase of multifamily structures in the past, without NCP authority.

FAA Response:

2a). The airport sponsor has authority to acquire multifamily residential properties using its powers as a municipal entity outside the Part 150 program. See, NCP Update, Vol. II, Section 6.1, page 6-1, and Figure 6-1.

2b). Record reflects that HJIA has been in negotiations to purchase a multifamily apartment complex since 2002, before the measure was presented to the public. Failure of HJIA to consult with College Park on the multifamily element prior to negotiations has deprived College Park, to its great detriment, of an opportunity to address this issue in an orderly manner and in a setting that would not have exposed it to this "dangerous litigation," and resulted in the financial losses of all involved parties that could have been avoided.

FAA Response:

2b). The airport sponsor has authority to acquire multifamily residential properties in noise impacted areas outside the Part 150 program. The fact that HJIA may have been in negotiations to purchase a multifamily apartment complex since

2002 is irrelevant to whether HJIA complied with the Part 150 consultation requirements. The Part 150 process is but one method by which HJIA may seek to acquire property for noise mitigation purposes. Furthermore, the Part 150 regulations only require consultation, and do not require approval or concurrence of local jurisdictions. College Park has had ample opportunities to address the issue relating to purchase of other apartment complexes.

2c). April 2007 NCP Update Federal Register notice was misleading and lacked public involvement. It was part of the secretive process to circumvent known objections by College Park. This resulted in College Park spending significant time and resources commenting on the wrong document. Further, FAA summarily rejected College Parks comments and approved the multifamily residence element within five business days which was not enough time to review, research and reflect.

FAA Response:

2c). College Park had ample and meaningful opportunities to raise and discuss its concerns regarding the voluntary acquisition of multifamily dwellings in the NCP update. The April 2007 Federal Register notice stemmed from the City of Atlanta's efforts to separate and move forward with two measures once it was required to revise the baseline NEM and comprehensive NCP update to include the 5th runway. Any public confusion caused by the notice was inadvertent and was remedied by republication of a revised notice. The events unfolded as follows:

The City of Atlanta submitted to the FAA for review a baseline/current condition NEM and an NCP that did not include the newly opened 5th runway. As required by the FAA, the City of Atlanta revised the NEM and NCP2. It took time to complete revision of the comprehensive NCP update. In the interim, the FAA was informed that because the City of Atlanta was under contract to acquire the Wynterbrook apartment complex, while the revision of the comprehensive NCP update was in progress the City would submit the revised NEMs to the FAA for acceptance along with an abbreviated NCP update. On March 29, 2007, the City submitted a limited update consisting of the measures for voluntary acquisition of multifamily dwellings in the 70 DNL contour and for sound insulation within the 65 DNL contour.

The FAA announced its acceptance of the NEMs and a period for public review and comment on the NCP in the Federal Register on April 23, 2007. The notice did not specify the two measures involved but directed the public to contact FAA's representative Scott Seritt for copies of the NCP. College Park representatives reviewed and commented upon the draft comprehensive NCP update that it obtained from the HJIA website. The FAA drafted a response to the comment and prepared to issue a Record of Approval.³ However, College Park discovered the misunderstanding and contacted the FAA. Although the two measures in the abbreviated NCP were a subset of the draft comprehensive NCP, the FAA withdrew the notice.

As the City of Atlanta by this time had completed its revisions to the comprehensive NCP update, the City withdrew the abbreviated update and submitted instead the NCP now before the FAA for approval, with appropriate references to the 5th runway. The FAA then issued a revised Federal Register notice, which solicited public review and comment on the comprehensive NCP update. This ensured that the FAA and City of Atlanta were able to fully consider the issues of concern to College Park.

3a). College Park argues that it has a scarce supply of low to moderate housing in College Park and loss of these apartment complexes would have significant negative financial, demographic and political impacts on the community. b) The City of College Park then cites litigation from 1995 to support this position because in that litigation, the City of Atlanta took a similar position in support of excluding multifamily housing from the original 1985 Comprehensive NCP.

FAA Response:

3a). The Part 150 program is not intended to harm local communities. Undesirable negative financial and other impacts of voluntary acquisition of apartment complexes in College Park can be addressed by various means, including efforts by the City of Atlanta to properly coordinate redevelopment of the acquired property with College Park. As to future coordination of redevelopment by the City of Atlanta with College Park through the NMAC see the Response to Comment 1c.

3b). *City of Atlanta v. Watson*, 267 Ga. 185 is a 1996 Georgia Supreme Court opinion where HJIA supports its 1985 NCP position not to include multifamily housing in the "residential" acquisition – citing an intent to minimize to the greatest extent possible the loss of the tax base and utility services as well as the disruptions to the local community.

FAA Response:

3b). A close reading of *City of Atlanta v. Watson* (267 Ga. 185) reveals that the City of Atlanta determined not to include multifamily housing in the initial phase of the 1985 NCP voluntary residential acquisition measure, "but expressly leaves open the possibility that such residences will be purchased during a later phase of the Program." (at 189). The City of Atlanta did not state in the 1985 NCP that it would never seek to acquire multifamily residential housing. Rather, the City indicated that it would implement acquisition in phases to allow staged redevelopment in the impacted areas (eliminating secondary impacts that would result from too much property acquired and demolished at one time). This phased approach would also allow the City to use federal funds or income from the redevelopment of previously acquired noise land to finance future acquisition.

In any event, the cited case has no bearing on FAA's determination whether HJIA's proposed 2007 NCP measure to acquire multifamily housing within the 65+ DNL contour is reasonably consistent with the goal of reducing existing and/or preventing future non-compatible land uses.

4. The City of Atlanta has not demonstrated that it has the ability to comply with the lawful requirements to return property to productive use as required by law. The City of College Park points to the NCP's lack of consideration of alternatives to acquisition and demolition. There is no discussion of the feasibility of soundproofing the affected properties as an alternative, particularly with respect to properties at the edge of the 70 DNL contour or straddling the 65 and 70 DNL contours. The lack of description and analysis of the impact of this measure or the consideration of alternatives also fails to meet the requirements of the law and, in particular, 14 CFR §150.23.

Specifically, the City of College Park states that the lack of consideration of alternatives fails to meet the requirements of 14 CFR §150.23 and requests consideration of sound attenuation for properties within the 70 DNL "for some, but not all, of the multifamily residences listed in the airport's NCP." FAA Response:

4). Analysis of program alternatives is discussed in 14 CFR §B150.7. It requires airport sponsors, to the extent the strategies are appropriate to the specific airport, to analyze specific measures. Section B150.7(b) provides the alternatives that must be considered within the Part 150 Study, these include: acquisition of land and land interests, construction of barriers and soundproofing public buildings, preferential runway systems, flight procedures, airport restrictions, actions which would have a beneficial noise control or abatement impact on the public, and actions recommended for analysis by the FAA for the specific airport. Sound insulation, with the exception of public buildings, is not an alternative that must be considered. However, with respect to this specific airport, sound insulation has been considered to the extent appropriate because property owners for land that straddle the 65 DNL contour and the 70 DNL contour can opt not to be acquired, and instead, request sound insulation. Six of the seven properties at issue straddle the contours, and the owners would therefore be able to opt for either measure. It is our understanding that the seventh property is not a property that is currently at issue, and that the owner of the Wynterbrook apartment complex will select acquisition. These measures, as applied to the impacted properties, are at the land owners' discretion.

5. College Park needs to participate as a NCP sponsor so as to facilitate further NCP land acquisition and sound insulation. Specifically, this is due to the City of Atlanta's poor record of returning property to productive use once it has been acquired. College Park urges FAA to refrain from approving any aspect of HJIA's NCP that would involve land acquisitions outside the municipality of Atlanta until the questions of compliance with AIP Grant Assurance 31 for extant unneeded noise lands.

FAA Response:

As to College Parks' ability to receive grants to carry out projects in the NCP, see Response to Comment 1(e). As to consideration of compliance issues, the FAA administers its airport noise compatibility planning program separately from its airport grant compliance program. The FAA is required to approve or disapprove noise compatibility program measures submitted for approval under 14 CFR Part 150 if they meet statutory and regulatory criteria. 49 USC § 47504(b). Neither the City of Atlanta's performance in returning property to productive use, or in disposing of noise lands are relevant in determining whether a NCP measure is approvable under Part 150 regulations. See 14 C.F.R. § 150.35. The FAA will take any appropriate action to assure that the City of Atlanta is in compliance with its obligations under its federal grant assurances.

1 Although this letter was dated November 6, 2007, it was not received by FAA until November 7, 2007.

2 The revisions to the NCP were editorial in nature, not substantive. The recommended measures in the NCP were based upon the forecast 2010 NEM, which included the fifth runway.

3 Over time the FAA has developed expertise in the evaluation of NCP measures. In this case, and over the span of five days, that expertise was sufficient to enable the FAA to respond to College Park's comments regarding the draft comprehensive NCP.



"Nissalke, Tom"
<Tom.Nissalke@atlanta-airpo
rt.com>

11/19/2007 03:38 PM

To Kimberly Arnao/ASO/FAA@FAA
cc Bonnie Baskin/ASO/FAA@FAA, Scott
Seritt/ASO/FAA@FAA, Dana Perkins/ASO/FAA@FAA,
Rusty Chapman/ASO/FAA@FAA
bcc

Subject RE: Part 150 Study Request for Clarification

Kim,

Thank you for pointing out that inconsistency in the text. It is the City of Atlanta's intention to give residential land owners having property that straddles the 70 DNL contour the option of receiving either Mitigation Measure 1 or Mitigation Measure 3 as described in Table 9.2.

Thanks,
Tom

-----Original Message-----

From: Kimberly.Arnao@faa.gov [mailto:Kimberly.Arnao@faa.gov]
Sent: Friday, November 16, 2007 10:44 AM
To: Nissalke, Tom
Cc: Bonnie.Baskin@faa.gov; Scott.Seritt@faa.gov; Dana.Perkins@faa.gov;
Rusty.Chapman@faa.gov
Subject: Part 150 Study Request for Clarification

Tom,

I am conducting my legal review of the Part 150 Noise Compatibility Program and needed clarification on an issue.

Specifically, I am requesting clarification from the City of Atlanta regarding the application of Measure 1 and Measure 3 in the September 5, 2007 Noise Compatibility Study to residential properties that straddle the 65 and 70 DNL contours. This request results from the FAA's review of comments received from the City of College Park interpreting the exclusive application of the acquisition measure (Measure 1) to these properties. College Park is concerned that this limitation will result in the unnecessary acquisition and demolition, and the consequent loss of low and moderate income housing, where an owner of one of these residential properties may not be interested or willing to be acquired. It appears that the NCP requires the acquisition of residential properties that touch the 70 DNL contour, although they may have a significant portion within the 65 DNL contour, without the option of sound insulation as an alternative.

Please clarify whether the application of the Noise Compatibility Program measures allow residential land owners of properties straddling the 65 and

the 70 DNL contours the discretion to request the application of either Measure 1 or Measure 3 to their property.

Thank you for your assistance with this issue.

Kimberly L. Arnao
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FAA Southern Region
(404) 305-5206

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