

May 13, 1999

The Honorable James E. Rogan
House of Representatives
Washington, DC 20515

Dear Congressman Rogan:

I am writing regarding a legal opinion from the Federal Aviation Administration (FAA) on whether Airport Noise and Capacity Act (Airport Noise Act, commonly known as ANCA) requirements apply to airport noise restrictions, including a mandatory curfew, desired by the city of Burbank at the Burbank-Glendale-Pasadena Airport (the Airport).

In response to your inquiry, enclose our legal opinion on the applicability of Airport Noise Act requirements to the airport noise restrictions desired by the city of Burbank. In developing this opinion, the FAA carefully reviewed documents submitted by the city of Burbank, which included a Briefing Book. This opinion also took into account related submissions from the Airport, the Air Transport Association, and the National Business Aviation Association, Inc. The FAA also carefully considered the information provided during meetings with the city and these organizations. The FAA coordinated this opinion with the U.S. Department of Transportation, Office of General Counsel.

Based on our review, the FAA concludes that Airport Noise Act requirements do apply to the city's proposed airport noise restrictions, including the mandatory curfew. The plain language of the Airport Noise Act and the relevant legislative history as well as a close reading of the related intergovernmental agreements support the conclusion that the intergovernmental agreement exemption to Airport Noise Act requirements does not apply to the city's desired airport noise restrictions. This letter does not address the acceptability of the restrictions currently being considered by the Airport as part of the currently ongoing Airport Noise Act 14 CFR Part 161 study. This opinion merely explains why the Airport must follow the Airport Noise Act requirements and procedures to implement additional restrictions.

In summary, one of the main purposes of ANCA, which became effective on November 5, 1990, is to limit uncoordinated restrictions on aviation and airport access. Consistent with this statutory purpose, the FAA reasonably requires some specific evidence that airport noise and access restrictions were contemplated at the time the intergovernmental agreement is signed in order to apply the exemption from the Airport Noise Act. Parties proposing that airport noise or access restrictions are covered by the ANCA intergovernmental agreement exemption should be able to provide written evidence that (1) the restrictions were already in effect on November 5, 1990, (2) the restrictions were specifically included in intergovernmental agreements signed before November 5, 1990, or (3) the restrictions were clearly contemplated at the time the intergovernmental agreement was signed. This requirement has not been met.

Persuasive written evidence is lacking to support the claim of an Airport Noise Act exemption covering its desired noise restrictions. There is no evidence showing that the airport noise restrictions proposed by the city were already in effect on November 5, 1990. Evidence is not available to show that the city's proposed airport noise restrictions were contemplated by or that they were specifically included in either of the two agreements under discussion (the Joint Powers Agreement and the 1977 Settlement Agreement). Neither agreement requires creation of, specifically lists, mentions, or imposes any particular airport restrictions. Neither agreement contains a requirement to impose specific noise or access restrictions.

While the agreements, by reference to California law, do prohibit the Airport's impacts imposed on nearby communities from exceeding those existing at the time the Airport was established, this prohibition does not rise to the level of established airport noise or access restrictions. There is no evidence to show that at the time the agreements were signed in, 1977, the agreement drafters contemplated that this prohibition against contour expansion would be accomplished by specific airport noise restrictions such as mandatory caps, curfews, noise budgets, and operations caps now sought by the city of Burbank. Agreement requirements could be met by means other than the restrictions sought by the city.

Specifically, agreement requirements as set forth in California law could be accomplished by land use restrictions, including appropriate zoning around the Airport. Additionally, as noted in the 1977 FAA Decision document supporting acquisition of the Airport by the cities, the Airport could meet the agreement requirements by acquiring aviation (noise) easements or by soundproofing. Therefore, Airport Noise Act requirements do apply to the city's proposed noise and access restrictions.

I trust that this information is helpful. If I can be of further assistance, please contact me or Deputy Chief of Staff Marie-Therese Dominguez at (202) 267-3111.

An identical letter has been sent to Senator Boxer, Senator Feinstein, Congressman Berman, and Congressman Sherman.

Sincerely,

/s/

Nicholas G. Garaufus
Chief Counsel

Enclosure

cc: Ms. Joyce Streeter
Eliot Cutler, Esq.