

LOCAL OR FEDERAL CONTROL OF
LOCALLY OWNED AND OPERATED AIRPORTS?

- POSITION PAPER -

PREPARED BY
VENTURA COUNTY
AIRPORT & HARBOR DEPARTMENT
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VENTURA COUNTY AIRPORT/HARBOR DEPT.

INTRODUCTION

Much discussion has been generated lately concerning whether or not the County could control the development and operation of the Oxnard Air Force Base should it be turned over to the County for airport purposes.

This discussion stems largely from the Federal Aviation Administration's (FAA) reluctance to support the County's intention to close the facility from 10:00 p.m. to 7:00 a.m. and to negotiate with airlines for a 14 takeoff and 14 landing per day limit for commercial jet aircraft.

FAA POSITION

It is FAA's responsibility to ensure unimpeded interstate commerce. It is this author's opinion that FAA takes the position it does because of the following reason. Should the FAA publicly support such limitations there is the possibility that large environmentally sensitive regional facilities such as LAX would be forced to follow the precedent, and thereby initiating the deterioration of the reliability and capacity of the national air transportation system.

COUNTY POSITION

Although this department can appreciate FAA's concern, we feel that each situation should be judged on its own merits.

By Board of Supervisors' policy the Oxnard Air Force Base will be used to satisfy the short haul needs of the County, thereby having little effect on interstate commerce. The proposed 14 takeoffs and 14 landings by commercial jets and the proposed 10:00 p.m. to 7:00 a.m. closure of the airport

will adequately serve short haul demand at the airport through 1990 according to State studies. The reason for these 14 flights being expressed as a limit, and for the proposed closure is that a study on projected aviation noise done by Wyle Laboratories in 1970 recommended these as operating limits to ensure the airport's environmental compatibility with the surrounding community.

CAN THE COUNTY IMPLEMENT ITS PROPOSED OPERATING PROCEDURES?

The FAA has control over airports to the extent that they provide airport development funds. FAA could withhold funds or it would be legally possible for them to require repayment for any investment made in an airport that was not being used in a manner consistent with the grant agreement (generally requires that recipients not discriminate against a class of aircraft). FAA also controls the nation's airspace, including airspace on and around all airports.

The County's desire to limit the number of commercial jet flights (until such time as technology allows increased numbers without increasing the noise exposure area) and to limit the hours of operation has to do with operating the facility, not the airspace. We feel, therefore, that such operating procedures are within our efficacy as airport operators. This position is supported by our County Counsel in a letter dated Feb. 8, 1974, stating in reference to the Supreme Court case (1973) 93 S.Ct. 1854 City of Burbank vs Lockheed Air Terminal, Inc., "therein the United States Supreme Court struck down a city ordinance which attempted to regulate aircraft night flights in order to control aircraft noise problems. "The Court based its decision on the fact that the noise control act of 1972 reaffirms and reenforces the conclusion that FAA, now in conjunction with EPA, has full control over aircraft noise, preempting State and local control. "This statement, however, is directed at State and local control which results from the governmental entity's exercise of its police power. "Thus, municipal ordinances passed in a legislative capacity will be preempted." "In contrast, the

Court stated that where the governmental entity is also the owner-operator of the airport in question, the entity will retain its power to regulate in a proprietary capacity." (Emphasis added) ID at 1861, footnote 14; see also Loma Portal Civic Club v. American Airlines, Inc. (1964) 61 Cal. 2d 582; Stagg v. Municipal Court (1969) 2 Cal. App. 3d 318 "The Court's holding that restrictions will be held valid where imposed in a proprietary rather than legislative capacity is consistent with the traditionally recognized exception to Federal preemption that 'the owner of an airport has the right as a landowner to decide who is to use his airport and under what conditions' (emphasis added) 53 Ops. Cal. Atty. Gen. 75 (1970) at 80."

The County intends to exercise its powers as operator to control noise, not to discriminate against commercial jets. Such aircraft... in fact all aircraft, will be controlled to the extent that their operation might affect the expansion of the established noise contours. Although we feel curfews present a tractable alternative for controlling noise, the County has revised its application for the Air Force Base to show our intent to completely close the airport from 10-7, rather than to just restrict commercial jet flights during that period. This decision is based not only on noise but on economics (less than 5% of the forecasted operations should occur during these hours). This practice is acceptable to FAA; however, the question might be raised - "What if the County decides at a later date to open the airport to non-noisy aircraft during these hours?" It is our belief that, based on the above-mentioned County Counsel interpretation and also on other empirical data to be identified below, the County could enact the curfew and continue with the 14 takeoff and landing guideline without FAA reprisal.

SOME EMPIRICAL EVIDENCE IN SUPPORT OF COUNTY'S CONTENTION

1) The County of Orange has taken several steps to deal with the critical noise problems they face at Orange County Airport.

- a) County Resolution 1-72 prohibits turbojet operations at Orange County Airport between the hours of 11:00 pm and 7:00 am.

- b) All commercial air carriers at Orange County Airport are limited by the terms of their leases to a maximum number of flights.

Although these steps include curfews and flight limitations negotiated with the airlines, the airport has not lost Federal financial support nor has it been required to pay back any funds already invested in airport development. In a letter dated July 23, 1969, from Nathaniel Goodrich, General Counsel for FAA, to Robert Nuttman, Assistant County Counsel for the County of Orange, the following was stated: "In your meeting with a representative of our Regulations Division you were furnished a copy of Senate Report No. 1353 on the subject of aircraft noise abatement." Section 611 of this report... "does not derogate the authority of a State or local public agency to fix the permissible levels of aircraft noise at any airport or airports which it owns." "... In other words, the Orange County Board of Supervisors may, under the current state of the law, issue an ordinance fixing aircraft noise levels at the Orange County Airport." This opinion, in conjunction with State law PUC Title 4, Subchapter 6, promulgated in accordance with Article 3, Chapter 4, Part 1, Division 9 of the Public Utilities Code (which gives the County, as operator, the authority to fine violators \$1000 for each violation of established noise standards) provides the County with an effective tool for the control of aircraft generated noise. In the same letter to Orange County the FAA stated that curfews could be justified if the enactment of such curfews could protect the operator from liability, and thus protecting the operator's ability to serve the civil aviation needs of the public. Our noise standards, and any operating procedures which might be used to enforce them, are designed to protect the public from any unreasonable noise exposure ... and the County from any lawsuits resulting therefrom.

2) The City of Santa Monica passed Section 10105 A, Ordinance No. 902 on December 20, 1972, which stated that "No pure jet aircraft shall take off and only emergency landings

of such aircraft may be made between the hours of 7:00 p.m. of one day and 9:00 a.m. of the next day." Since then, the City Council passed another ordinance which totally prohibits pure jet aircraft from using the airport. The city was not required by FAA to pay back any of the Federal investment in the facility, and to date there is no evidence that FAA will withhold future airport funds. For example, the Santa Monica Municipal Airport is currently participating in an FAA-sponsored planning grant program for airport master planning. FAA participation (2/3 funding) was sought and acquired after jet restrictions were imposed.

3) The City of Long Beach has a curfew from 11:00 p.m. to 7:00 a.m. at Long Beach Airport; and, additionally, they limit the number of scheduled airline flights through contractual agreement with the airlines. These operating procedures (which are similar to those which are being proposed by Ventura County) did not cause FAA to request repayment for prior investments. To the contrary, FAA continues to process and award airport development funds to Long Beach Airport.

4) The Port of Oakland, on January 23, 1974, passed the following ordinance for their general aviation airport (North Field, Metropolitan Oakland International Airport):

"Between 10:00 p.m. (local) and 7:00 a.m. (local of the following day) -- a) all turbojet-powered aircraft, regardless of size, number of engines or type of certification (relative to Part 36); b) all turboprop-powered aircraft with certificated gross takeoff weight in excess of 12,500 lbs.; c) all four engine reciprocating engine powered aircraft; and d) all military or other public aircraft of the types or models referred to above, are prohibited from taking off from Runways 27R and 27L, or landing on Runways 9L and 9R."

Despite this restriction, the Oakland Port Authority is still eligible for full participation by FAA in the Port's airport development programs.

5) Los Angeles International Airport, which operates under a procedure which discriminates against noisy aircraft, has no problems with respect to FAA funding participation. A preferential runway use program was inaugurated on April 29, 1973, which requires all aircraft traffic between the hours of 11:00 p.m. and 6:00 a.m. to use over-the-ocean approaches and departures. Over-the-water operations can be used 90 per cent of the time. For the remaining 10 per cent, when weather conditions do not permit, only aircraft meeting Federal Air Regulations Part 36 noise limits are permitted to land or take off from the over-land direction (meaning that those aircraft not meeting Part 36 requirements are not allowed to land at LAX at these times).

SUMMARY

The above empirical evidence is strongly reinforced by statements made by the Environmental Protection Agency in response to Section 7 (a) of the Noise Control Act of 1972 (preliminary study in the preparation of noise standards/regulations required under Section 7 (c) of the Act, due to Congress in late 1974), which recommend that in particular situations the airport operator should establish restrictions on the types of aircraft which use the airport, number of operations per day per lessee, hours of operation of the airport, noise limits to be complied with, and the like.

It is interesting to note that in all of the above examples, FAA itself is contributing to the implementation of these operating procedures through 1) FAA control tower personnel informing pilots of the local rules 2) publishing of the Airman's Information Manual (AIM), read by virtually all pilots, which describes each airport facility including its operating procedures. (The restrictions used in the examples can all be found in Part 3 of the AIM).

Although the above examples are only a few of the many cases in point, they are sufficient for the purposes of this position paper - that is, to show through empirical evidence that the County as airport operator (hopefully with the participation of the Cities of Oxnard and Camarillo) can in fact control the destiny of development and operation of the Oxnard Air Force Base.