



Information Item

Date: July 12, 2012

To: Mayor and City Council
From: Marsha Moutrie, City Attorney
Martin Pastucha, Director of Public Works
Subject: Santa Monica Airport Visioning Process Phase III Update and Information Regarding Airport Commission Recommendations to City Council

Introduction

This information item provides a progress report on the third phase of the public process regarding the future of the Santa Monica Airport that is anticipated to conclude in early 2013. Since Council gave staff direction on Phase III initiatives on [May 8, 2012](#), the Airport Commission approved recommendations previously distributed to Council regarding current and future operations of the Airport. Information related to the Commission's recommendations and other information about frequently mentioned airport closures are also included.

Discussion

AIRPORT VISIONING PROCESS PHASE III UPDATE

Since Council's direction to staff to proceed with Phase III, work has progressed on a number of initiatives intended to help the City determine how the Airport might become a better neighbor. Below is a summary of the progress on Phase III initiatives and plans for future Phase III efforts.

Interim progress on Phase III initiatives include:

1. Increase transparency, communications and trust:
 - Provide more information about flight operations including a means of counting repetitive operations – Staff is currently reviewing proposals to install additional cameras to institute a program to count and categorize repetitive operations.

- Provide Federal Aviation Administration data that would be updated on the Airport website monthly – This information has been posted on the website by month under the *Operational Data* link. (http://www.smgov.net/Departments/Airport/Operational_Data.aspx)
- Develop a program of education seminars targeted to the general public and the aviation industry – On June 30, 2012, the City and the Museum of Flying cohosted a “Future of Avgas” seminar. The next seminar is being planned for this fall regarding advances in aircraft noise mitigating technologies.
- Continue the Airport Open House as an annual event – Staff has confirmed that the second annual Airport Open House will be held on September 22, 2012, from 11 a.m. to 4 p.m.

2. Transforming SMO into a model, "Green" Airport:

- Enhance emission reduction efforts – Staff has identified and is working with a Fixed Based Operator (FBO) to install electric ground power units replacing gas powered units. This would reduce exhaust and noise from the existing gas fueled auxiliary power units used by aircraft to power up during preflight preparation time.
- Launch the “Quantifying Aircraft Lead Emissions at Airports” study in cooperation with the Airport Cooperative Research Program and the Federal Aviation Administration (FAA) – This study started sampling efforts in July 2012 that will continue for the next few months.
- Sustainable Transportation Incubator feasibility – In June 2012, prequalified teams were invited to respond to a request for proposals (RFP) with proposals due on July 19, 2012. The scope of work for this RFP also includes the development of a strategy to dispense alternative aircraft fuels. A consultant team recommendation is expected to go to Council in late summer.

3. Design improvements for non-aviation land:
 - Enhance recreational and arts facilities; improve infrastructure for circulation including vehicular, bicycle, pedestrian, and public transit; provide light neighborhood serving retail – This scope is included in the aforementioned RFP.

4. Potential for making the Airport a better neighbor with greater community benefit:
 - Conduct a fee and fine study – Staff will release a RFP for a consultant to conduct this study in early August 2012.
 - Determine the feasibility of using aircraft silencers at the Airport – As mentioned in the [July 10, 2012](#), staff report to Council, one aircraft exhaust silencer company was found in Germany and the feasibility of their use on aircraft at the Airport is being evaluated.

5. Continue on-going dialogue with the FAA to explore all possibilities for reducing adverse impacts of Airport operations:
 - City staff meets with the regional FAA representatives on quarterly basis. Additionally, the City Manager and City Attorney meet periodically with FAA officials in Washington D.C. to promote open dialogue and communicate information about the City's concerns.

AIRPORT COMMISSION RECOMMENDATIONS

The Airport Commission recently approved recommendations to Council regarding current and future operations of the airport. Staff offers this information to facilitate consideration of those recommendations.

1. Landing Fees

The Airport Commission has suggested that landing fees should be charged to all Airport users and that fees should be increased to cover costs of operations and maintenance. Information about the history of the current fees may be useful in considering future options.

The current landing fees were set by the City Council in June 2005 through adoption of Resolution No. 10047. It sets the landing fee at \$2.07 per 1,000 pounds of maximum certificated gross landing weight of the aircraft as published by the aircraft manufacturer. But, the resolution exempts from the fee requirement all aircraft that are based at the Airport for a period of 30 days or more. The exemption is based on the theory that the owners of based aircraft pay rent for their use of Airport property and that their rental payments include the cost of runway usage.

The current landing fee program was adopted in order to resolve an administrative complaint filed with the FAA against the City. That complaint was ultimately filed by an aviation industry organization on behalf of Bombardier Aerospace Corp., which manages and operates fractionally owned aircraft, and Dassault Falcon Jet Corporation, which sells and supports Falcon business jets manufactured by its parent company. The complaint, filed under Part 16 of the Federal Regulations governing aviation, challenged the City's landing fees, which were adopted in 2003 and associated with a pavement maintenance program. Specifically, complainants alleged that the landing fees violated grant assurances prohibiting discrimination and exclusive rights, the 1984 Airport Agreement, and the 1948 Surplus Property Instrument of Transfer. Assisted by outside counsel who specialized in aviation law and FAA practice (Palmer & Dodge in Washington, D.C.), the City opposed the complaint.

On January 3, 2004, the FAA issued a 55-page Director's Determination finding that the City's landing fees were noncompliant with federal regulations. Among other things, the Director held that: the landing fees were "inherently high by any standard" (the Director describes them as the highest in the country); there was no relationship between landing fee revenues and pavement expenditures; and, the fees unreasonably allocated airfield costs to a very small group of users who operated aircraft weighing over 10,000 pounds instead of spreading the costs over all users. Based on these and other findings, the Director concluded that

the fees violated the City's obligations to make the Airport available to the public on reasonable terms without unjust discrimination and without exclusive rights.

After the issuance of the Director's Determination, the City submitted a corrective action plan to the FAA to resolve the Part 16 dispute. The plan called for repealing the existing fees and adopting the current landing fee program. The FAA approved the corrective action plan, and the Council approved the current fee program in June 2005 as part of the City budget.

The fact that the present fees were adopted to resolve a complaint and accepted by the FAA for that purpose means that any increase in the fees is likely to receive very close legal scrutiny. The fee and penalty study that the City is undertaking should be helpful in assessing the suggestions on changing fees.

2. Permits and Insurance

The Commission also suggested that the City should exercise its proprietary powers to require that all aviation operators have operations permits and toxic tort liability insurance in order to obtain compliance with City policies, protect the City against liability, and enhance security.

The Airport Commission's suggestion highlights the potential importance of the City's proprietary powers in evaluating future options. However, for the moment, the City's options are constrained mainly by the City's contractual agreements with the federal government, and not by federal law. And, as previously noted on a number of occasions, the City and the FAA disagree as to when the grant obligations expire. Moreover, even when they do expire, the FAA will likely continue to assert the position that the post-War transfers impose similar limitations to those currently imposed by the grant agreements.

As to the extent of proprietary powers, the City's legal staff agrees with the Commission's suggestion that the City, as Airport proprietor has the right, under federal law, to adopt regulations that ensure neighbors' quality of life by

protecting against a variety of adverse Airport impacts, including but not limited to noise. However, the FAA disagrees. It has taken the position that proprietary powers are much more limited and that status as proprietor does not empower the City to adopt requirements that directly or indirectly limit Airport access unless the type of limitation has been expressly approved by the federal government or the courts.

Staff anticipates that the dispute between the City and the federal government as to the extent of the City's proprietary powers will have to be resolved in court. Meanwhile, as to requiring permits and insurance, it is likely that the FAA would see imposing such requirements on pilots and business owners as indirect restrictions upon access, which would be subject to challenge in a Part 16 proceeding while the grant conditions remain in effect.

3. A Non-addition Rule and Other Judicially Sanctioned Operational Limits

The Commission also suggested that the City adopt a "non-addition" rule like the Van Nuys Airport restriction that Los Angeles successfully defended in court, and also adopt a helicopter operations reduction rule, similar to that passed and successfully defended by New York City. Information about these two cases may be helpful in considering these recommendations.

The Van Nuys "non-addition" rule was adopted to reduce noise impacts, challenged in court, and upheld in an unreported decision of the Federal District Court. Clay Lacy Aviation v. Los Angeles, 2001 WL 1941698 (C.D. Cal. 2001). The non-addition rule restricts the amount of time certain aircraft may be present at the Van Nuys Airport each year and applies only to Stage 2 aircraft with noise levels equal to or exceed 77 dBA. Under the non-addition rule, such aircraft may only be parked, tied down, or hangared at Van Nuys Airport for a maximum of 30 days each year. However, the rule exempts such aircraft if they have been parked, tied down, or hangared for 90 days or more during 1999, the calendar year before the rule's adoption.

The non-addition rule was challenged by the aviation industry on constitutional grounds, the claims being that the rule violated the Equal protection Clause, the Commerce Clause, and the Supremacy Clause. The federal government was not a party, and there was no claim that the non-addition rule violated any grant condition or federal regulation (probably because the rule implemented a noise ordinance that predated current restrictions). The Court concluded that there was no constitutional violation and upheld the non-addition rule.

In considering whether a similar rule should be proposed for Santa Monica, factors to bear in mind might include that the Airport already has very strict noise limits, it has no based Stage 2 aircraft, and the based fleet is not growing. Thus, the facts are quite different than the facts at Van Nuys Airport.

The Commission also suggested consideration of a helicopter operations reduction rule similar to that successfully defended by New York City in National Helicopter Corp v. New York, 137 F.3d 81 (2nd Cir., 1998). That case arose from a dispute between New York City and a fixed base operator, which had been a lessee at one of the city's four heliports for many years and had been involved in many disputes with the city. The city evicted National Helicopter and sought a permit to continue the heliport's operations but divert sight-seeing operations to the three other heliports. Ultimately, the city council adopted a resolution which approved the special permit subject to curfews and other restrictions on operations that were intended to reduce operations in order to limit noise. National Helicopter filed suit, claiming that the operational restrictions were preempted by federal law. As in the Van Nuys case, the federal government was not a party to the case.

The Second Circuit Court of Appeal upheld the curfews and also upheld requirements phasing out weekend operations and reducing total operations by 47 percent. These three restrictions were found to be constitutional because they were reasonable and appropriately intended to reduce noise. However, the

court also struck down a requirement restricting sightseeing routes because federal law prohibits local regulation of flight routing.

So, National Helicopter illustrates the principle, recognized in many cases, that airport proprietors may, consistent with federal law and contractual restrictions, take reasonable steps to restrict noise. However, the case is of limited immediate utility to Santa Monica because the case was litigated in court on constitutional grounds and not in an FAA administrative proceeding. That is, there was no issue of compliance with New York's contractual requirements. Nonetheless, the case could be useful to the City in that it is a reported decision that recognizes and explains airport proprietors' rights. City staff agrees with the Commission's suggestion that the City should bear in mind the possibility of asserting its proprietary rights.

4. Airport Closures

The City has also received a number of inquiries from residents of both Santa Monica and Los Angeles about airport closures in other cities. Generally, the thrust of these questions is whether Santa Monica can do the same thing as those cities; and, if not, why not.

Generally speaking, both the FAA and the aviation industry strongly and successfully oppose the closure of airports. The FAA has repeatedly expressed its firm commitment to keep airports open. The Aircraft Owners and Pilots Association's (AOPA) website reports that the number of public use airports in the county has decreased significantly in the last forty years, and it encourages its members to join the fight against closures. The site also reports on AOPA's successes in opposing closures and operational restrictions.

The two airport closures that generate the most questions to staff are Meigs Field in Chicago and Rialto Municipal Airport. This information is provided in response to those questions.

A. Meigs Field

Apparently, the legend about Meigs Field is that Mayor Daly closed the airport by simply bulldozing the runway. Staff has received inquiries as to whether Santa Monica should similarly "take matters into its own hands".

Of course, the history of the Meigs Field closure is more complex than bulldozing a runway. An excellent summary appears in the Seventh Circuit's appellate decision in AOPA v. Hinson (FAA), 102 F.3d 1421 (1996).

In brief, Meigs Field was located on Northerly Island, a man-made island in Lake Michigan. The island has been owned by the Chicago Park District (not by the City of Chicago) since 1933, and the Park District leased it to the city. In 1946, the city and park district entered into a 50-year lease to permit the city to construct and operate Meigs Field. The state issued a permit to expand the island for airport purposes, and the United States issued a permit for airport construction. However, the permits did not obligate the city or park district to operate an airport.

In 1996, with the lease expiring, the Chicago City Council voted to change the zoning of Northerly Island to replace the airport with a park. The FAA, which had previously opposed closure, withdrew its opposition. AOPA filed suit; and the State of Illinois, which favored maintaining the airport, intervened to draw the FAA into the dispute by compelling it to undertake environmental review. So, the question before the court was whether the FAA could be compelled to act in opposition to the proposed closure.

The District Court considered that FAA's explanation of its non-opposition, which was that it lacked authority to force Chicago to continue to operate the airport because the owner (the Park District) would not renew the city's lease. The FAA explained that the grant agreements between the FAA and the City of Chicago contemplated the lease's expiration and included

language specifically contemplating the possibility of closure and providing for monetary reimbursement of grant funds. This language provided for repayment if "a long term lease or purchase agreement for the airport is not entered into prior to the current lease expiration in 1996." The district court concluded that the FAA's position was reasonable and that a court could not compel the FAA to take particular enforcement action.

On appeal, the Seventh Circuit affirmed. It held that: the FAA's decision not to try to compel Chicago to operate the airport pursuant to the grant agreements was not "major federal action" requiring environmental assessment; even if the FAA had discretion to force the city to operate the airport, its decision not to was unreviewable; and the closure of Meigs field did not violate the public trust doctrine.

Thus, Meigs Field facts are different than Santa Monica's (because Santa Monica owns the Airport land and because the FAA actively opposes closure of the Airport); but the story of the Meigs Field closure is, nonetheless, an interesting study in how the FAA exercises its authority.

B. Rialto

The City of Rialto owns a municipal, general aviation airport that occupies 453 acres of land adjacent to the relatively recently constructed I-210 freeway. In 2004, the City issued a report about options for the airport's future. It noted that there had been a significant decline in both based aircraft and operations, that the FAA had declined to support construction of an additional runway, that the airport operated in a deficit, that there was stiff competition from 9 other airports within 20 miles, and that the new freeway had increased developers' interest in redeveloping the land. That report recommended further study of two options: retaining the airport, perhaps in a scaled-back configuration; or, redeveloping the airport land and closing the airport.

The following year, Congress voted to authorize closure. This unprecedented congressional action was undertaken by adding a rider to a massive highway funding bill during conference negotiations. The rider's language required the city to pay the FAA 90 percent of its "loans." They did not actively oppose the rider. An FAA spokesman was quoted as saying that this was the first time that an airport closed through the legislative process (as opposed to the administrative process conducted by the FAA). The local press reported that a congressman pushed for the rider to aid his business partner and top campaign contributor, who sought to redevelop the property.

Thereafter, Rialto approved plans for Renaissance Rialto, a project that was to include 2,000 homes, 14.7 million square feet of industrial space and retail centers along the I-210. The developer agreed to purchase the 450 acre airport at a price to be fixed by the City and approved by the FAA. Then, the recession struck.

Today, the Rialto airport is still open, apparently continuing to wither away. The development plans have apparently been rendered infeasible by today's economic realities. Moreover, the debacle is complicated by the fact that Rialto's redevelopment agency owns the airport.

Both of these closure actions are extremely unusual. In one case, the FAA opted not to oppose closure. In the other, Congress took the decision out of the FAA's hands, and the FAA did not publicly protest. The facts of both situations are very different from Santa Monica's. Santa Monica Airport is not underutilized (like Rialto's airport) nor is it situated on leased land (like Miags Field). In Santa Monica's case, the FAA would certainly strenuously oppose closure, as would the aviation industry.

Next Steps

Staff will continue to analyze Phase III initiatives as well as other suggestions that may arise from the community or aviation industry in an effort to make the Airport a better neighbor. In early 2013, staff will return to Council to provide an assessment of efforts made and what may be accomplished going forward given the feasibility analysis of the Phase III work. To the degree possible, this would include accommodations, if any, from the FAA to help lessen impacts on the surrounding neighborhoods of the Santa Monica Airport. Phase III staff recommendations would provide information for Council decisions on action to take with regard to the future of the Airport.

Prepared by: Marsha Moutrie, City Attorney
Susan Cline, Assistant Director of Public Works