



CITY OF NEWPORT BEACH
MINUTES of the
AVIATION COMMITTEE
(Draft until approved by the Committee)

MEETING DATE & LOCATION: **Monday, July 22, 2019, 5:30 p.m.** at the Friends Room, Central Library, 1000 Avocado Ave., Newport Beach, CA 92660

ATTENDANCE:

Committee membership:

Council Member Jeff Herdman, Chairman
Council Member Brad Avery, Vice Chairman
Nancy Alston – SPON representative
Jeffrey Cole – District 6
Alan Guenther – District 1
Roger Ham – Newport Coast representative
Anthony Khoury – AWG representative
Stephen Livingston – General Aviation
Hugh Logan – District 7
Thomas Meng – District 4
Bonnie O'Neil – District 3
Jack Stranberg – Member at Large
Sharon Ray – District 2
Cameron Verdi – District 5

City representatives present: City Manager Grace Leung, Deputy City Manager Tara Finnigan, City Attorney Aaron Harp, Consultant Tom Edwards, Shirley Oborny, Executive Assistant to the City Manager

1. **WELCOME/CALL MEETING TO ORDER**

Chairman Herdman called the meeting to order at 5:30 p.m. For the first six months, the Aviation Committee (Committee) will meet monthly. One of the priorities is to ensure each Committee member has an understanding of the underlying and current issues therefore a notebook containing relevant information has been provided to each member. The notebook contents can also be found on the City website.

2. **ROLL CALL**

Committee members briefly introduced themselves and shared their experiences and interests. Chairman Herdman introduced Mayor Dixon and David Wilson, the City's consultant, who were present in the audience.

Vice Chairman Avery and Committee Members Khoury and O'Neil were absent.

3. **RECEIVE AND FILE**

Minutes from the April 15, 2019 and June 10, 2019 meetings.

Motion to receive and file the minutes of the April 15, 2019 and June 10, 2019 meetings was made by Committee Member Meng and seconded by Committee Member Ham. The motion carried unanimously with Vice Chairman Avery and Committee Members Khoury and O'Neil absent.

4. **CURRENT BUSINESS**

(a) Presentation on the Airport Noise and Capacity Act of 1990 (ANCA)

City consultant Bill O'Connor, of Cooley LLP, used a PowerPoint presentation (see attached) to explain ANCA. He said a disjointed and inefficient patchwork of local noise and access restrictions affected public airports prior to 1990. In 1990, Congress passed ANCA to provide a uniform standard for public airport access restrictions. ANCA requires FAA approval of any action that has the effect of restricting public access to an airport.

In response to Committee Member Livingston's questions, Mr. O'Connor explained that the classification of operators as Commercial or General Aviation depends on whether they operate under Part 135 or Part 91 and some said operators could be operating under Part 121. He said that if an airport sponsor can reach a voluntary agreement with operators regarding an enforcement mechanism, the voluntary agreement is not subject to FAA approval under ANCA. City Attorney Aaron Harp added that the County enforces the provisions of the GANO (General Aviation Noise Ordinance).

In reply to Committee Member Cole's question, Mr. O'Connor indicated the settlement agreement is a form of a voluntary agreement. Voluntary agreements are usually more difficult to achieve in a General Aviation context because of the number of transient operators.

In answer to Committee Member Logan's question, Mr. Harp explained that the number of scheduled flights determines the classification of an operation.

In response to Committee Member Verdi's question, Mr. Harp believed the City of Newport Beach would attempt to extend the settlement agreement prior to its expiration.

In reply to Committee Member Ham's question, Mr. O'Connor hesitated to comment regarding a restriction on selling jet fuel after 9 p.m. without reviewing it in detail because a number of scenarios may or may not require ANCA review.

Replying to Committee Member Meng's question, Mr. Harp clarified that the JWA nighttime noise threshold is based on the limits negotiated in the original 1985 settlement agreement.

Charles Klobe said he understood that the JWA noise level was an average rather than a single event and asked if the airport could cause a JetSuite operation to enter into an agreement similar to an agreement with a commercial airline. Mr. Harp explained the settlement agreement deals with noise in two different ways and that the JetSuite operation is treated as commercial and is subject to the same curfew.

Michele Lovenduski said there have been no noise violations because noise levels are averaged over a three-month period. She asked if the City could provide input to change the methodology, if the County increased the decibel levels for the noise monitors, and whether the noise office would be willing to track each jet to provide raw data rather than an average. Consultant Tom Edwards explained that SENELs for commercial aircraft are averaged over a quarter as provided in the settlement agreement and that the City audits County data, and the data has been accurate. The City cannot provide input to change the methodology. Mr. Harp explained that when new noise monitors were installed, the existing and new monitoring equipment were installed side by side, and measurements from the two were compared. Because the new equipment was more sensitive than the existing equipment, the decibel levels were increased slightly but essentially, the levels

are the same. He said the City sued the FAA regarding NextGen, but the FAA was unwilling to disperse flight paths.

An unidentified speaker felt the FAA should fix flight paths so that the same residents are not subjected to noise all the time.

Dennis Bress said the Request for Proposals (RFP) process appears to be the only way to curb General Aviation and suggested a third party advocate for the community during the RFP process. Mr. Harp replied that Council Members have been strong advocates for ensuring the RFP contains the relevant items.

Jim Mosher noted the GANO applies to both Commercial and General Aviation aircraft and that the County will now publish and post SENEL data monthly for every aircraft. He asked whether the applicability of ANCA to an airport was affected by the airport receiving federal grants and if JWA is open 24 hours because of federal requirements or because it was open 24 hours when ANCA was enacted. Mr. O'Connor indicated a court decision from the Second Circuit ruled that all public airports regardless of federal funding status are subject to ANCA. The statute is intended to require existing airports to go through a process if they want to enact new restrictions.

(b) Overview of the Brown Act and Public Meeting Protocol

Mr. Harp explained key provisions of the Brown Act and that Committee decisions cannot be made outside the public meeting context. If a majority of Committee members meet, a public notice must be issued or the meeting violates the Brown Act. He also cautioned the committee about how some non-meeting communications – conversations with other members, emailing the entire committee - could cause them to inadvertently violate the Brown Act. The ramifications of violating the Brown Act include the nullification of any decisions, criminal sanctions, and the payment of attorneys' fees and costs. Mr. Harp also discussed the protocol for public meetings for committee member and public participation. He said typically, the committee chairman opens an agenda item, the staff report is presented, and the chairman acknowledges committee members and then opens the floor to public comment, not public questions. The chair then solicits additional committee questions or a decision.

Jim Mosher said he felt Aviation Committee agendas need more descriptive information under the various agenda items. He added that the Brown Act prohibits Committee members from discussing among themselves a topic raised by the public and not listed on the agenda.

(c) New Committee Structure and Responsibilities

City Manager Grace Leung explained that the Aviation Committee is advisory to the City Council and that forming subcommittees will be an effective means for the Committee to work through issues and topics. Staff proposes subcommittees for education and outreach, government relations, and operational and technical initiatives and additional subcommittees may be necessary as issues evolve. Public notices do not have to be issued for subcommittee meetings as the subcommittees will be small working groups of the Committee. Ms. Leung added that the subcommittees may be appointed in two or three months after Committee members have sufficient background information to determine their interests.

Chairman Herdman commented that Committee members are responsible for reaching out to and educating their constituents, answering questions, listening to complaints, and transmitting community feedback to the Committee.

Committee Member Cole suggested the Committee establish a strategy to reduce noise and pollution from aircraft. A subcommittee for government relations could be divided into the federal government/FAA and the County/airport.

Chairman Herdman noted most City boards and committees establish goals and objectives for the year and suggested the Committee could schedule a working session to establish goals and objectives.

Committee Member Alston said she wants the subcommittees to study the details of issues and explained the City is attempting to obtain airline agreement on some issues.

Jim Mosher agreed Committee members should serve as community advocates and educators but said subcommittees will not form the City's policy, guide staff, or establish public relations. Subcommittees will make recommendations so that the Committee can make its decision in public.

Mel Beale asked if non-Committee members may participate in the subcommittees. Ms. Leung explained that the subcommittees may invite non-Committee members to provide information.

Heidi Hendy suggested the Committee review the seven pending lawsuits against the FAA.

Lorian Petry recommended Committee members interface with the residents of their communities to provide education and receive feedback. Chairman Herdman noted the Balboa Island Improvement Association and the Little Balboa Island Property Owners Association have airport liaisons who inform the associations of airport issues.

An unidentified speaker discussed a smartphone app that provides decibel readings and said all residents impacted by airplane noise should be made aware of the Committee meetings. She said JetSuiteX should be in the commercial terminal and that ACI's \$40 million investment makes sense only if it maximizes the aircraft using its FBO.

John Sciarra suggested Committee members Google airport pollution to learn more about international pollution issues. He expressed disappointment with past City leadership regarding airport issues and said the City should oppose any airport expansion.

An unidentified speaker questioned why Council Members supported airport expansion. Chairman Herdman replied that the Council did not vote in support of expanding JWA. Committee Member Alston recommended internet research be conducted through Google Scholar.

(d) General Aviation Improvement Program (GAIP) Update

Deputy City Manager Tara Finnigan provided a brief overview of, and status update on, the County's General Aviation Improvement Program. On June 25, 2019, the Board of Supervisors certified the EIR and approved a proposed project composed of two full-service Fixed Base Operators (FBO), one new and one existing limited-service FBO, a general aviation terminal, and an optional general aviation facility with operational hours of 5 a.m. to 11 p.m. The County is now developing a Request for Proposals to select the FBOs. City staff anticipates the Board of Supervisors' selection of the FBOs may occur in the spring of 2020 and estimates the GAIP could be complete in 2026 or 2027.

Heidi Hendy said she understood the City would approve the RFP including the option for the GA terminal. She expressed concern regarding the use of jets in a manner similar to Uber.

Jim Mosher asked if the RFP covers all 14 phases of the project, who will control the small GA areas, and whether the County will approve separate construction contracts for the east and west sides of the project. Mr. Edwards said that staff expects one RFP, that the FBO located on the east side of the property will likely control that GA space. Chairman Herdman added that the County has been working with the City.

An unidentified speaker asked if the GA mix will be based on the 2016 mix or today's mix, and where the hangars for the GA will be located. Mr. Harp said the space available for small GA will increase under the approved plan. The location of hangars for the GAs is not yet known. The scope of the RFP has not been determined, but staff will focus on protecting the City's interests and proposing project elements that are acceptable to the City.

Committee Member Alston questioned whether the City should support the SoCal Pilots Association's suggestion. Mr. Harp indicated staff will likely advocate for any restriction that will ensure the area is used for small aircraft because they utilize a different flight path than the jets.

Lorian Petry remarked that FBOs make money on fuel and questioned whether the FBOs would review the RFP and decide they could not make money on the project.

Committee Member Alston noted the individual who was running ACI's project made several promises but noted he is no longer in that role.

Committee Member Livingston commented that FBOs do not make much money on fuel sales. The FBOs make the bulk of their profit from tie-down and hangar fees and said their goal is to have planes based onsite for long periods of time.

5. **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Heidi Hendy asked what actions the FAA took prior to changing the flight paths and what the City is doing about the FAA. She said lawsuits against the FAA may need to be class-action lawsuits and that these are health issues more than noise issues. Deputy City Manager Finnigan said City representatives met with the FAA approximately a year and a half ago and that the City is retaining a new federal lobbyist to attempt to affect the FAA reauthorization bill. She said the City filed a lawsuit against the FAA when NextGen was implemented, and the County of Orange joined in the litigation. The lawsuit was settled in 2018.

Mr. Edwards clarified that ultra-fine particles cause the health risks. The Obama Administration sought to regulate ultra-fine particulate pollution, but the Trump Administration has not pursued it further. Health concerns were set forth in the body of the EIR and the appendices and unfortunately, a study found the air quality met all goals of the Clean Air Act.

An unidentified speaker indicated the local Congressman has stated he is attempting to push JWA to participate in a pollution study and wants the City to ask the airlines to depart higher and faster. She inquired about LAX paying to sound insulate residences where noise reached levels above 65 decibels. Chairman Herdman said the City asked the Congressman to intervene with JWA and said the City is working to have airplanes travel higher and faster. Mr. Edwards said that the County of Orange has a program similar to the Los Angeles County program for SENELs but unfortunately, most Newport Beach residences are not located in the zone where SENELs exceed 65 decibels. Quarterly noise reports are available on the County airport website under "community relations" and "noise access." Committee Member Alston noted a few residences in Santa Ana Heights benefited from the noise attenuation program, but some homeowners were dissatisfied with the results.

Jim Mosher said noise contours currently extend to the Nature Center, approximately, and are slowly extending into the Back Bay. He suggested staff provide information about the amounts of City expenditures on aviation issues and expressed his dissatisfaction with the City consultant's report on the noise monitor study.

6. **ITEMS FOR THE NEXT MEETING'S AGENDA**

Committee Member Cole suggested a subcommittee focus on points that the City and the community can use to influence the County regarding the GAIP and RFP.

Committee Member Logan commented that the Committee needs to spend more time learning about the City's efforts and accomplishments with respect to decisions by the FAA, federal government, and County Board of Supervisors. Chairman Herdman advised that a subcommittee will be tasked with that responsibility.

7. **NEXT MEETING – Monday, August 26, 2019, 5:30 p.m.**

8. **ADJOURNMENT**

Motion to adjourn the meeting was made by Committee Member Logan and seconded by Committee Member Meng. The motion carried unanimously with Vice Chairman Avery and Committee Members Khoury and O'Neil absent.

The meeting was adjourned at 8:05 p.m.

Cooley

Overview of Legal Considerations Applicable to John Wayne Airport

Bill O'Connor

Cooley LLP

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

GAÑO

- 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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