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May 15, 2003

Syn. No. 3
1/21/03

TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
SUPERVISOR GLORIA MOLINA
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **Los Angeles International Airport Expansion**

On January 21, 2003, your Board adopted Supervisor Knabe's motion regarding the expansion of Los Angeles International Airport ("LAX") proposed in Mayor Hahn's "Safety and Security Alternative." The Safety and Security Alternative would primarily focus on safety and security improvements and would entail some assurances that no more than 78 million annual passengers ("MAP") would utilize the airport following its implementation. You asked us to report back on measures that could be implemented at LAX to ensure, to the extent feasible, that the 78 MAP limit would not be exceeded.

The Los Angeles World Airports ("LAWA"), which operates LAX, has not yet released sufficient details regarding the Safety and Security Alternative for us to evaluate any mechanism it may propose to limit passenger usage at LAX to no more than 78 MAP.

Federal law substantially limits the authority of airport operators to place limits on the number of aircraft, and correspondingly the number of passengers, that arrive at and depart from airports as long as the involved aircraft meet defined noise standards. Most airline fleets now meet those noise standards.

Based on our investigation to date, we believe that a direct restriction on the number of passenger flights can lawfully be implemented at LAX only if the restriction is either voluntarily agreed to by LAWA and all the aircraft operators who use the airport, or if such a restriction is imposed on the aircraft operators by the Federal Aviation Administration ("FAA") following a federally prescribed "Part 161" study. It is important to note that such a direct restriction may be difficult to obtain due to potential resistance by the airlines to a voluntary restriction and the difficulty in receiving approval of an involuntary restriction from the FAA.

Additionally, we believe that a restriction on the further expansion of the airport facilities, and correspondingly some practical limitation on increases in the number of future annual passenger trips, may feasibly be obtained after the current modernization project by LAWA imposing restrictive covenants limiting further development of its airport property for the benefit of neighboring properties.

Discussion

Mayor James Hahn unveiled his Safety and Security Alternative for the LAX expansion in July of last year. Although general details regarding that alternative have been published, specific details have not been released. A draft master plan and supplemental environmental impact statement/environmental impact report are expected to be made available for public and agency review shortly. Information available at this point indicates that the new proposal will include gate space that will accommodate 78 MAP, as opposed to the 89 MAP that had been proposed to be accommodated by the previous version of the LAX expansion plan most recently advocated for implementation by LAWA (the "Alternative C - No Additional Runway" proposal). The information made available to date on the Safety and Security Alternative does not indicate how, if at all, LAWA intends to assure interested parties that the 78 MAP limit will not be exceeded once that alternative has been implemented.

Details regarding how LAWA would propose to cap airport usage at 78 MAP are necessary, since the federal government has largely preempted airport operators, such as LAWA, from imposing either noise or capacity restrictions at the nation's airports.

The Airport Noise and Capacity Act of 1990 (42 U.S.C. § 47521 et seq.) ("ANCA") essentially provides that airport operators cannot limit the number of aircraft flights that arrive at or depart from an airport based on noise or access concerns as long as the aircraft meet certain federal requirements pertaining to noise output (known as "Stage 3" noise levels). Access limitations on Stage 3 aircraft can generally only be imposed by airport operators if: a) the restriction was already in effect on November 5, 1990; b) the access restriction is agreed to by the airport operator and all aircraft operators affected by the restriction; or c) the FAA has approved such a restriction following the airport operator's submission of a comprehensive Part 161 study.

The FAA cannot approve a Part 161 access restriction unless it determines that the restriction is reasonable, does not create an undue burden on interstate and foreign commerce, and is not inconsistent with maintaining the safe and efficient utilization of the nation's navigable airspace.

In exchange for the preemption of local control over aircraft noise and capacity restrictions, ANCA required that, with enumerated exceptions, all aircraft over 75,000 pounds had to meet Stage 3 noise requirements by December 31, 1999. Accordingly, the vast majority of aircraft that would utilize LAX following implementation of any LAX modernization project will meet Stage 3 noise requirements and will, therefore, be subject to the protection against local noise or access restrictions contained in ANCA. We are advised that the airlines have traditionally opposed voluntary restrictions regarding their Stage 3 aircraft. Furthermore, we are unaware of any airport operator in the nation that has successfully obtained an involuntary noise or access restriction against Stage 3 aircraft from the FAA through the above-referenced Part 161 study process.

In light of the uncertainty regarding LAWA's ability to obtain a voluntary limitation from the airlines or a FAA imposed limitation on the number of aircraft that can arrive at and depart from LAX following completion of any modernization project, we believe that a restriction on the construction of additional airport facilities presents a potentially feasible means of practically limiting increases in airport traffic over the 78 MAP total which LAWA has identified as its target capacity.

A California property owner may lawfully covenant to impose restrictions on the use or improvement of its property for the benefit of the owners of other property. (Civ. Code § 1468) Such restrictions, if properly formulated

and recorded, are enforceable by the owner of the benefitted land and its successors and are binding upon the owner of the restricted property and its successors. We believe that LAWA could lawfully subject its property to some restrictions regarding the future improvement of the airport property for the benefit of other designated real property owned by other nearby public entities or private parties.

Although a LAWA covenant that imposed a specific cap on aircraft or passenger volumes at LAX would likely be held to be preempted by ANCA, we see no present reason why LAWA could not lawfully restrict its own property so as to limit future construction of additional gates, passenger terminals, or other improvements designed to increase airport capacity beyond that volume envisioned in the Safety and Security Alternative. We are aware of no law that categorically requires airport operators to expand their facilities or convert non-flight related airport facilities (i.e., rental car lots) to flight-related facilities merely to meet additional proposed flight volumes.

LAX was declared to be a "Noise Problem Airport" by the Board of Supervisors under state law in 1972 and has operated under a noise variance issued by the California Department of Transportation since that time. The LAX master plan review process conducted over the past several years has served to emphasize the pervasive concerns of the communities surrounding the airport that the transportation infrastructure around LAX simply cannot bear significant additional increases to passenger volumes at LAX and that those communities should not be required to shoulder the further burdens of a significantly larger airport. Given these facts, we believe that your Board could justifiably request that LAWA execute such a restrictive covenant for the benefit of nearby properties.

As indicated above, we anticipate an opportunity to review the Safety and Security Alternative to the LAX master plan and the accompanying draft supplemental environmental impact statement/environmental impact report either later this month or next. Supervisor Knabe's January 21, 2003, motion directed County staff and consultants to review various aspects of this alternative, including the potential that it is merely an initial step for even further expansion of LAX. Following our review, we will report back to your Board with further details and recommendations regarding LAWA's suggested mechanism to limit airport capacity to 78 MAP.

If you have any questions concerning this matter, please contact either myself, Assistant County Counsel John Krattli at 974-1838, or Principal Deputy County Counsel Richard Weiss at 974-1921.

LWP:RDW:rdw

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors