

COUNTY OF SAN MATEO
DON HORSLEY
SUPERVISOR, 3RD DISTRICT

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July 6, 2017

The Honorable Michael Lempres,
Mayor, Town of Atherton
Office of the Mayor
91 Ashfield Road
Atherton, CA 94027

Re: San Carlos Airport

Dear Mayor Lempres:

Thank you for your letter of June 21 regarding your concerns about noise from aircraft operating at San Carlos Airport. Let me assure you once again, on behalf of both myself and my fellow Supervisors, that the County shares your concerns and, like you, would like there to be a simple and fast solution to the problem. But as our work on the issue has revealed, that is not possible. As described below, the County is moving on several fronts to address the issue and to implement a practical and legal solution to the problem. That effort cannot be implemented as quickly as we would like, however, particularly given the stated opposition of the FAA and aviation interest groups.

Your letter is largely based on the premise that the FAA “would consider a formal request for noise abatement procedures for the San Carlos Airport.” Accordingly, you urge the County to request FAA approval for a variation of the curfew the County is currently considering. Unfortunately, while the FAA no doubt will “consider” a curfew, it also appears that the FAA would not approve a curfew.

The FAA recently stated in a letter from Kevin Willis, who heads the FAA’s office that enforces federal airport grants, to the National Business Aircraft Association, the FAA believes that “the proposed Ordinance, if enacted by the County, would likely violate Grant Assurance 22, Economic Nondiscrimination.” A copy of the letter is attached for your convenience.

Although the County does not agree with Mr. Willis’ conclusion and some of the statements in his letter, which was not based on any information provided by the County and does not reflect an accurate understanding of the issues at San Carlos, the letter underscores that the County must present a compelling case for a curfew (or other operational restrictions) in order to win FAA approval. That includes following FAA standards for adopting curfews and similar restrictions.



The County's goal is to obtain real and meaningful relief for residents affected by aircraft noise from San Carlos, not to submit a proposal that has little or no chance of success simply in order to be seen as doing something. Accordingly, we have decided to step back from immediately adopting (or submitting for approval) a curfew and instead we are moving in a more deliberate, and multi-pronged, manner to develop solutions to the noise problem and to compile the record necessary to assure ultimate approval of those solutions.

Specifically, the County is taking a number of steps including the following:

- The County has begun a noise study under 14 CFR Part 150 to better define the nature of the noise problem and to identify appropriate solutions. The Part 150 process is the FAA's preferred process for studying noise issues and developing solutions and will provide an FAA-acceptable basis for any proposed noise abatement measures.
- The County has retained Vector Airport Systems to monitor operations at San Carlos to better identify the fleet mix and operational patterns in order to assist the County in designing appropriate noise abatement and mitigation measures based on operational patterns. The Vector system will integrate with the County's noise complaint system to allow the County more precisely correlate operational patterns with complaint patterns.
- The County has retained Hughes Aerospace to develop flight paths and instrument approach and departure procedures to reduce noise over residential areas and to expedite FAA review and approval of such procedures.
- The County continues its public outreach efforts to area residents, airport users, and other stakeholders to gain further insight into the nature of the noise problem and possible solutions.
- The County is implementing a noise management program, including hiring new staff, to manage the County's noise abatement and mitigation efforts, including the measures discussed above, to address the general problems of noise and growth at San Carlos.

Your specific suggestions do not avoid the need for the County to compile the appropriate record and persuasively justify a curfew or other measure. Although this letter is not intended to be a legal memorandum, let me briefly explain our position, and I invite the Town's counsel to discuss this issue further with the County Counsel or our outside' legal counsel.

1. Designate San Carlos as a "Noise Problem Airport". This is an interesting suggestion. I understand that that designation is made by CalTrans pursuant to a standard set by state law and CalTrans regulations. I do not believe that San Carlos meets the legal standard to be designated by CalTrans as a "noise problem airport."
2. Submit to FAA a Variation of the County's Proposed Curfew. As discussed above, we do not think immediate submission of a curfew will lead to FAA approval. The modifications you propose would not change that conclusion. Excluding interstate flights from a curfew may further complicate legal issues with the curfew. Imposing a one takeoff and landing per operator during curfew hours is simply a variation on a curfew that would still be subject to FAA review, and must be justified on the basis of the noise benefits and burdens on users.

3. Limit Scheduled Operations. This is also an interesting proposal and I will direct staff to include it in the analysis of noise abatement options. That kind of restriction, however, is subject to FAA review and also must be justified based on a factual record, just as a curfew. We feel that the County's current approach is the best approach to adopting effective noise abatement measures.

I appreciate that you would prefer more immediate action. So would I. But the reality is that immediate adoption of a curfew, even a curfew with the modifications you propose, is likely to lead to prolonged litigation and is not likely to lead to FAA approval of a curfew. I very much hope that you and your colleagues will cooperate with us in this process so that we can put in place an effective set of noise abatement measures that can withstand FAA and judicial scrutiny and provide real noise relief for our residents and neighbors.

Sincerely,



Don Horsley, President

San Mateo County Board of Supervisors

cc: Supervisor David Pine, Vice President, San Mateo County Board of Supervisors
Supervisor Carole Groom, San Mateo County Board of Supervisors
Supervisor David Canepa, San Mateo County Board of Supervisors
John L. Maltbie, County Manager
Michael Callagy, Assistant County Manager
Jim Porter, Director of Public Works
Atherton Vice Mayor Cary Wiest
Atherton Council Member Elizabeth Lewis
Atherton Council Member Rick DeGolia
Atherton Council Member Bill Widmer
Congresswoman Anna Eshoo
Congresswoman Jackie Spear
California State Senator Jerry Hill
Calm the Skies Resident Group

Attachment: Letter from FAA to Alex Gertsen, NBAA Re Proposed Curfews at SQL



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

June 5, 2017

Mr. Alex Gertsen, C.M.
Director, Airports and Ground Infrastructure
National Business Aircraft Association
1200 G. Street, NW, Suite 1100
Washington, DC 20005

Dear Mr. Gertsen:

Thank you for your letter of April 21 seeking information whether a proposed noise ordinance at the San Carlos Airport (SQL) would be allowable. In your letter, you wrote that the proposed ordinance would restrict any aircraft with an A-weighted decibel (dBA) maximum noise level equal or greater to 74.5 dBA during morning and evening hours based on noise characteristics published by the Federal Aviation Administration (FAA) in Advisory Circular 36-1H, *Noise Levels for U.S. Certified and Foreign Aircraft*. Your letter further states that the proposed curfew would prohibit and restrict operations by non-stage related aircraft deemed 'noisy' by San Mateo County, the sponsor of the SQL, during specific time periods.

You provided a copy of the proposed Ordinance being considered by San Mateo County (dated March 2, 2017). In summary, the proposed Ordinance prohibits the use of certain "noisy" aircraft during an evening curfew period, and limits the number of "noisy" flights during a specified morning and evening shoulder periods. Noisy aircrafts are defined as "any aircraft – not rated by the FAA as a Stage 2, 3 or 4 aircraft pursuant to 14 CFR part 36 and that has an A-weighted decibel (dBA) maximum noise level that is equal or greater than 74.5 dBA based upon the FAA Advisory Circular 36-1H." The curfew period is between 9:00 p.m. and 6:00 a.m. The morning shoulder period is between 6:00a.m. and 9:00 a.m., and the evening shoulder period is between 6:00 p.m. and 9:00 p.m.

Specifically, "... the airport is closed to all noisy aircraft during the curfew period. During the morning shoulder period, each operator is permitted to conduct no more than one landing and one takeoff with a noisy aircraft. During the evening shoulder period, each operator is permitted to conduct no more than one landing and one takeoff with a noisy aircraft." Exemptions include maintaining pilot proficiency, medical transport, Government operated aircraft, emergency operations and weather/mechanical delays or issues.

On its face, this proposed Ordinance appears to discriminate against select aircraft that the County determined to be 'noisy.' This proposed restriction of aircraft emitting a higher than 74.5 dBA is arbitrary in that there is no analysis or justification why this number was selected. It appears to single out specific aircraft that operate at the airport.

As you may be aware, airport sponsors have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. The Federal government has preempted the areas of airspace use and management, air traffic control and aviation safety. This authority, codified at title 49 U.S.C. § 44715, constitutes the basic authority for Federal regulation of aircraft noise.

Furthermore, SQL is a federally obligated airport and has accepted more than \$12,528,064 in airport development grants. Under the various Federal grant programs, the sponsor of a project agrees to assume certain Federal obligations pertaining to the operation and use of the airport. These Federal obligations are embodied in the application for Federal assistance as sponsor assurances (Grant Assurances). The Federal obligations become a part of the grant offer, binding the grant recipient when it accepts Federal funds for airport development.

Grant Assurance 22, *Economic Nondiscrimination*, of the airport grant assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

Consistent with Grant Assurance 22, airport sponsors are prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. The FAA has determined – and the Federal courts have held – that the use of noise control regulations to ban aircraft on a basis unrelated to noise is unjustly discriminatory and a violation of the federal grant assurances and Federal surplus property obligations.

Consequently, based on what you provided to this office, it appears this proposed Ordinance, if enacted by the County, would likely violate Grant Assurance 22, Economic Nondiscrimination.

As a matter of policy, the FAA encourages airport proprietors to develop and implement aircraft noise compatibility programs under part 150 when the need arises. Where an airport proprietor is considering an airport use restriction, part 150 provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, including the grant assurances in airport development grants. As part of a Part 150 study, the FAA requires the sponsor to analyze fully the anticipated impact of any proposed restriction. The FAA must evaluate whether the restriction places an undue burden on interstate or foreign commerce or the national aviation system, and whether the restriction affects the sponsor's ability to meet its Federal obligations. Certain restrictions may have little impact at one airport and a great deal of impact at others. Accordingly, the sponsor must clearly present the impact of the restriction at the affected airport.

I hope this information is helpful. Please feel free to contact me at (202) 267 3085 with additional questions.

Sincerely,

A handwritten signature in blue ink that reads "Kevin C. Willis". The signature is written in a cursive style with a large initial "K".

Kevin C. Willis, Director
Office of Airport Compliance
and Management Analysis

cc: Elliott Black, Director, Airport Planning and Programming (APP-1)
Scott Mitchell, Acting Manager, Airports Law Branch (AGC 610)
Mark McClardy, Director, Western Pacific Region (AWP-600)