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**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

IN THE MATTER OF COMPLIANCE
WITH FEDERAL OBLIGATIONS BY
THE CITY OF SANTA MONICA,
CALIFORNIA

FAA DOCKET NO. 16-02-08

**CONCERNED RESIDENTS
AGAINST AIRPORT POLLUTION
POST-HEARING BRIEF**

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Concerned Residents Against Airport Pollution was founded in 2003 to represent Santa Monica and Los Angeles communities surrounding Santa Monica Airport (SMO), with regard to safety, noise, and air quality concerns emanating from the airport. We have worked cooperatively with local, state, and federal representatives to educate them about the concerns of the community with regard to SMO. Both California Assemblymember Ted Lieu and Los Angeles City Councilmember Bill Rosendahl have publicly applauded the work we have done in this area. With this in mind, I would like to present, for your honor's review, a representative perspective from the communities' point of view.

I want to begin by establishing, for the record, the full support of Concerned Residents Against Airport Pollution for the arguments put forth by the City of Santa Monica in this Part 16 Hearing.

It would certainly be considered reasonable for both the City of Santa Monica as well as the Department Of Transportation/Federal Aviation Administration to give considerable consideration for the safety of those who are close to the perimeter of any airport, and certainly an airport that has established residential communities and busy roadways as close to the runways' ends as does SMO. If airport access is such a driving force that it preempts such a consideration, than therein lays a major contentious point between aviation interests and the rights of the people.

In this Post Hearing Brief I have highlighted the safety-related information that the community feels is key to this issue.

One aspect to the safety argument that was raised but was not a focus; In the transcripts of the Part 16 Hearing fourth day (FAA4.DOC) beginning at the Bottom of page 687, line 25:

Mr. Pilsk, attorney for the City of Santa Monica says, “The point is that there’s an underlying power of proprietors to do the things that they need to do to address local safety, environmental, and other concerns. And that power is not pre-empted. It can take the form of a parameter rule, it can take the form of a safety restriction. It’s the power that’s not pre-empted that’s the key. And that’s that in a nutshell.”

The following is taken from “Plaintiffs’ Position Concerning the City of Santa Monica’s Ongoing Legal Right to Regulate Aircraft Operations at Santa Monica Airport”, August 17, 2000 - *Cole, et al, v. City of Santa Monica* (Case SC 055183):

The City’s legal rights can be summarized as follows:

- First, the city enjoys broad, historical powers as the Airport’s proprietor. Historically, any airport proprietor has enjoyed both the right and responsibility to restrict obnoxious uses of its property so as not to become liable to its neighbors.
- Second, a federal court ruled in 1979 that the city’s then-present total jet ban was not sufficiently justified by the City at the time.

That does not mean, however, that the City must forever accept –

and impose upon the airport's neighbors – all of the ill effects of jet operations no matter what they may be. Instead, the same federal court confirmed in 1979 that the City maintains broad powers as the airport's proprietor. On appeal, these holdings were affirmed.

- Third, the City and the FAA subsequently entered into the 1984 Agreement, which contractually fixes and limits the City's proprietary powers in certain respects, primarily concerning control of the Airport's use regarding noise effects. The 1984 Agreement, however, otherwise expressly preserves the City's proprietary rights and powers concerning the Airport.
- Fourth, in 1990 Congress enacted a particular statute (the Airport Noise and Capacity Act of 1990, or "ANCA") that significantly interferes with proprietary rights of airport operators generally. By its own express terms, however, ANCA does not interfere with the City's proprietary powers precisely because of the existence of the 1984 Agreement. In other words, because of an express, statutory exception to ANCA, the fact that the FAA and the City entered into a specific regulatory agreement in 1984 prevents the FAA from invoking ANCA to interfere with the City's reserved proprietary powers.
- Finally, the City's powers as Airport proprietor are unaffected by various federal laws that limit or "preempt" state and local governments' ability to impose conflicting laws. As a result the City

still enjoys broad proprietary powers to restrict the Airport's use reasonably pursuant to its "reserved powers" under the 1984 Agreement.

Although the banning of category C&D aircraft from using SMO was not what the Position Paper was intended to address, it does establish the City's right to do the things that they need to do to address local safety, environmental, and other concerns. As it was the intention of the Position Paper to address specifically, the City's right to regulate the Airport's use with regard to the air polluting qualities of the aircraft that use it, I would ask your indulgence to briefly point out a concern of the community that is not at all speculative. To quote from a Department Of Transportation (DOT) / Federal Aviation Administration (FAA) document [6750.16B CHG 2] dated 5/26/89; (underlined for emphasis)

d. Critical Jet Blast Areas. In addition to safeguarding the ILS (Instrument Landing System) guidance information from surface traffic interference, the system must be protected from accumulation of jet engine exhaust residue on the radiation and monitor antennas. Since prolonged engine exposure to jet fumes is dangerous to the health of personnel working on the system, it is also necessary to minimize this deleterious effect. Therefore, no jet aircraft shall be permitted to park or hold within 300 feet of the ILS equipment or shelters, the localizer antenna array, or the glide slope antennas. This distance is measured from the individual ILS component to the nearest aircraft engine, with the latter's jet exhaust directed toward the component.

Since in the testimony and exhibits of this Part 16 Hearing, it has been established that homes at either end of the runway are less than 300 feet from this critical blast, it is noteworthy and goes to the question, “Who is looking out for the airport surrounding community health and safety concerns?”

Because about half of SMO is bordered by the City of Los Angeles, specific concerns of Los Angeles residents are unique, as are so many aspects of SMO. Because SMO is close to the ocean, there are specific safety concerns that did not appear to be considered in the Part 16 Hearing. Approximately 90% of landings are from the east, over Los Angeles. Marine layer can affect a pilot’s ability to find the airport’s runway. It is not at all uncommon for aircraft to perform a missed approach procedure. A missed approach can happen on a clear day as well due to glare from the sun reflecting on the ocean and causing a pilot to lose visibility. These missed approaches are not something that SMO staff publicizes, but residents are well aware of them as they can be truly frightening. C and D category aircraft are also subject to these conditions leading to missed approaches.

A wind-rose graph of SMO shows that wind currents travel mostly from the west toward the east as we would expect since 90% of takeoffs are toward the west. These ocean currents carry with them, mostly into the Los Angeles neighborhoods east of SMO, the jet emissions alluded to in the previously mentioned “Critical Jet Blast Areas” of the DOT/FAA document. Those who have their neighborhoods saturated with the odors of jet fumes believe that this should be viewed as a safety concern. Parents feel it is unsafe to expose their children

to, as stated in the DOT/FAA document, “prolonged engine exposure to jet fumes is dangerous to the health...”

One last tie-in with the safety of most jet operations stems from the takeoff procedure necessary to safely use SMO’s runways. SMO Director Bob Trimborn stated in his testimony that full-throttle takeoffs can increase the risk of an overrun. At the bottom of page 3 from Patrick Carey’s Direct Testimony, he states,

“A “full throttle” or Rated Power is a normal takeoff operation for all jets operating from a short runway.” The community now notes that besides an increased risk of an overrun, this takeoff procedure adds a much-noticed increase in the amount of both fumes and noise to the areas that are impacted.

I researched the airports that Patrick Carrey cited as examples of airports that had homes near the runway ends similar to SMO. There is no question that SMO is unique in that as well as being the busiest single runway General Aviation Airport in the country, it has homes less than 300 feet from the useable runway ends. From the list of airports Mr. Carrey cited, the closest comparison is Hawthorne Municipal Airport, but it has a displaced threshold of about 500 feet to the east and about 1,000 feet to the west.

Regarding access at SMO: I have heard from operators of smaller piston aircraft that they no longer use SMO because of the increase in jet traffic. This might account for the large (more than 50%) drop in overall operations compared to the large (more than 1,500%) increase in jet operations. According to SMO tower personnel, smaller piston aircraft are, at times, told to go around

accommodating the arrival of a jet aircraft. I have seen this myself on a number of occasions.

Regarding jet safety from the Director's Determination, page 9: Although the safety record of jet traffic is commendable, it is important to take into account that increased jet operations along with the aging of the newer business jet aircraft will only increase the probability of an accident over time. Your question to Benjamin Harris on page 655 line 13 asking to for a comparison of the relative number of operations for A and B versus the number for C and D aircraft operations was insightful.

Regarding how RSA's are determined: It is categorically unfair to exclude the areas outside of the perimeters of an airport from the equation used to determine proper runway safety areas. This was stated by FAA representatives speaking at a Santa Monica City Council meeting. It was also alluded to by Rick Marinelli on day two of the Part 16 Hearing (FAA2.DOC) beginning on page 270, line 6, and again on day three (FAA3.DOC) page 576 lines 10 -14 (copied here):

REDIRECT EXAMINATION

BY MS. WEIR:

Q Mr. Marinelli, why is it irrelevant in your consideration of what's at the end of the RSA?

A Because we improve the RSA to the extent practicable regardless of what's at the end.

Practicable does not equate with sufficient, and when additional lives are at stake just outside the airport's perimeter, extra, not to the extent practicable, safety measures must be established.

Purchasing homes for the application of Runway Protection Zone (RPZ) areas would be unreasonably disruptive to both Santa Monica and Los Angeles Cities and would not address the risk to the heavily trafficked roadways that are closest to both the east and west sides of the airport.

In summary, the impacted communities' safety, including health, has been overlooked by the FAA and the City of Santa Monica. As the number of larger, faster, and more polluting aircraft grew, SMO neighbors' concerns grew. The City of Santa Monica has taken an important step to address these concerns. From the community point of view, we agree with the testimony of James Hall on page 29, item 62:

62. Based on my analysis of the director's Determination and the facts and information discussed above, I am of the opinion that AAS has failed to demonstrate that Santa Monica's Category C and D ban is not a reasonable response to a genuine and serious safety problem. AAS's position rests fundamentally on the notion that (1) because no accident involving Category C and D aircraft has happened yet, no action is required to address the possibility of such an accident, (2) aircraft pilot certifications, training and flight procedures provide all the required protection against overruns and undershoots, and (3) that the ban would restrict access to the Airport for a number of users. It is my opinion that all

of these positions are fundamentally at odds with the FAA's safety first mandate.

And with his answer to your inquiry of him on lines 17 to 21, of page 172 of the Part 16 Hearing transcript:

Q All right. You made reference in your testimony earlier on that -- something to the effect -- you know, I'm paraphrasing now -- that in your view the City has done what the FAA should have done.

A Yes, sir.

The ability of the community to be heard on matters that have significant impacts on them can be very challenging. Often, they are not heard from until changes have been established. Concerned Residents Against Airport Pollution wishes to thank the Hearing Officer for allowing us to participate in this hearing. We ask you to consider this Post Hearing Brief as representative of the community concerns and arguments.

Dated: April 1, 2009

Martin Rubin
Director

Concerned Residents
Against Airport Pollution