

Airport Proprietor Authority at General Aviation Airports

Location: FAA Denver Airports District Office
26805 E. 68th Avenue, Suite 224, Denver, CO 80249-6361

Date/Time: May 23, 2017, 1:00 PM

Attendees: FAA: John Bauer (Manager, Airports Division), Marc Miller (Compliance Specialist), Chris Schaffer (Assistant Manager, Airports Division); Longmont City Council: Joan Peck, Jeff Moore; Boulder County Citizen: Kimberly Gibbs (Citizens For Quiet Skies)

Meeting Minutes

I. Introductions

The meeting commenced at about 12:45. Introductions were made around the room. Meeting packets were distributed by Longmont officials. FAA officials distributed documents regarding the judicial cases Centennial Express Airlines v. Arapahoe Co. Public Airport Authority and Arapahoe County Public Airport Authority v. Federal Aviation Administration.

II. Review communications summarizing FAA guidance to Longmont officials regarding the airport proprietor's authority to adopt regulations, i.e. ANCA and federal grant assurances.

Ms. Peck reviewed section 1 of the meeting packet, which included email and other official communications authored by Katie Witt (former Longmont member), Tim Barth (former LMO airport manager) and Linda Bruce (FAA staff.)

These communications stated, either explicitly or implicitly, that the Airport Noise and Capacity Act (ANCA) of 1990 prevents the airport proprietor from adopting regulations to reduce aviation noise. The email from Witt to K. Gibbs (4/26/2012), presumably authored after receiving guidance from FAA officials, claims that the purpose of ANCA "is to prevent local airport operators to restrict the use of their airports because of noise concerns."

The Barth memo to council, dated June 24, 2014 first acknowledges that "It is true that LMO does not currently have commercial service air carriers or "staged" aircraft operations." The memo continues, "the ANCA states that any airport entertaining the imposition of noise-based restrictions must follow the federal regulations of 14 C.F.R Part 150 (Part 150) and Part 161 (Part 161) before those restrictions can be implemented." The memo claims that these requirements "apply to all airports imposing noise or access restrictions." The memo includes Part 150 and Part 161 documentation, including 150.1, 161.3 and 161.501, but not 161.5.

And finally, the email from Linda Bruce to Tim Barth dated Nov. 5, 2013, acknowledges that ANCA applies to Stage 2 and Stage 3 aircraft, "it still requires the FAA to determine the impact of restrictions on interstate commerce in all cases. Requirements for requesting the FAA to make such a determination are contained in Part 150 and Part 161."

III. Summarize ANCA scope and provisions – Longmont officials

Ms. Peck reviewed section 2 of the meeting packet (ANCA) and explained her understanding that ANCA applies only to stage 2 and stage 3 aircraft, comprising mainly commercial jets. Specifically, ANCA does not apply to non-stage aircraft, including small propeller-driven aircraft weighing less than 12,500 pounds. The primary concern at LMO is noise from skydiving jump planes, which are non-stage, propeller-driven aircraft.

Ms. Peck discussed the Barth memo and pointed out that Mr. Barth omitted any reference to 161.5, which defines a “Noise or access restriction” to include only Stage 2 or Stage 3 aircraft.

Mr. Bauer agreed fully that ANCA does not apply to non-stage aircraft, which includes skydiving jump planes. He explained that any proposed regulation must be carefully reviewed to determine if it may inadvertently affect aircraft covered ANCA. For example, a curfew would apply to all aircraft and therefore be subject to ANCA.

Discussion followed about the stated requirement that a Part 150 study must be conducted in order to adopt noise regulations. Mr. Bauer agreed that a Part 150 study is not a requirement for adopting noise regulations.

IV. Summarize federal grant assurance scope and provisions – Longmont officials

Ms. Peck explained her understanding of the federal grant assurances to include the provision that airport sponsors have the authority to adopt “reasonable, non-arbitrary and not unjustly discriminatory regulations” for the purpose of addressing noise concerns.

Mr. Bauer stated that the FAA’s primary focus is on safety. The FAA determines “reasonableness” of proposed regulations. Discussion followed about the FAA’s role in the Part 16 complaint process, with respect to determining the “reasonableness” of airport noise regulations. Ms. Peck asked if the FAA has ever ruled in favor of the sponsor, i.e. to support their noise regulations. Mr. Bauer stated that they have and that he would provide some examples.

Ms. Gibbs noted that, while she understands that a Part 16 complaint could be filed in response to adopting a noise regulation, that the city of Longmont is at increasing risk of litigation as the airport proprietor allowing the noise nuisance, and the city should consider their most defensible position. Mr. Moore stated that these sentiments did not necessarily reflect the views of city staff. Ms. Gibbs emphasized that Mr. Moore was correct, and that she is stating her own personal views and the interests of ordinary citizens in the community.

Ms. Peck asked if the grants take away the sponsor’s proprietary authority. Mr. Bauer stated that the FAA follows their authority and calls balls and strikes, i.e. determines if a proposed restriction complies with the grant assurances and federal law.

V. Discuss potential regulations that are within the proprietor’s authority – Longmont officials

Mr. Bauer stated that Congress granted the FAA the authority to designate the threshold for nuisance level aviation noise. The FAA designated the 65 DNL as the threshold of nuisance. The FAA will “take action” against the sponsor if they adopt a noise regulation to mitigate noise in areas where the measure is below 65 DNL.

Ms. Gibbs disagreed that the 65 DNL represented the “nuisance” threshold and emphasized that the 65 DNL is the threshold for obtaining federal funds for home soundproofing insulation obtained via a Part 150 process. She then asked Mr. Bauer to provide the federal statute granting the FAA authority to designate the 65 DNL as the “nuisance” standard and the threshold for “reasonableness” with respect to adopting noise regulations.

Ms. Gibbs noted that Naples adopted the stage 2 ban to reduce noise in areas less than 65 DNL. Mr. Bauer agreed and noted that the Naples case had unique circumstances.

Ms. Peck presented a list of hypothetical regulations for review. Does the airport proprietor have the authority to adopt the following hypothetical noise regulations?

- a. Limit hours to use the drop zone

Mr. Bauer stated that the city cannot limit the hours to use the drop zone landing area, even though this restriction would not affect control of the airspace.

b. Adopt Landing fees

Mr. Bauer stated that landing fees are common and may be adopted based on aircraft weight. This process requires a consultation with users.

Mr. Miller stated that the FAA may disapprove of landing fees if they are being considered for the purpose of reducing noise. Landing fees cannot be based on noise emissions.

c. Limit number and types of operations

Ms. Peck reviewed this option, which is specified in FAA Advisory Circular 150/5020-1, page 29. Mr. Bauer stated that this type of restriction would be considered discriminatory and would not be allowed unless the airport were trying to mitigate noise in areas exceeding 65 DNL.

d. Adopt noise capacity limits below 65 DNL

Mr. Bauer stated that this proposed regulation at LMO would be denied by the FAA.

e. Require class "C" USPA license

Mr. Bauer stated that this proposed regulation at LMO would be denied by the FAA, but that a FSDO safety review could be requested.

f. Prohibit intersection take-offs

Mr. Bauer stated that this proposed regulation at LMO would be denied by the FAA.

In summary, Mr. Bauer stated that these were his opinions based upon cursory information. Any actual proposed regulation would undergo a thorough review and evaluation. He further stated that under his current understanding of the noise characteristics surrounding LMO that it would be highly unlikely that the FAA would approve any regulations at LMO to reduce noise.

VI. Question and Answer

Q: What are potential consequences if the airport sponsor adopts a noise regulation that the FAA deems unreasonable?

A: 1. The FAA might suspend future grants and might require a payback of past grants. 2. FAA requires the sponsor to maintain obligations for the life of the grants. 3. In an extreme situation, the FAA might coordinate with the Department of Transportation to suspend all grants to the city. This has not been done.

Respectfully submitted by Kimberly Gibbs