

## Memorandum

Date: January 15, 2009

To: SDIA NTAG

From: Ken Brody  
Mike McClintock

Re: *Review of NCP Measures 9 and 10*

This memo reviews two FAA-approved land use compatibility measures (Numbers 9 and 10) in the 1991 San Diego International Airport (SAN) 14 CFR Part 150 Noise Compatibility Program (NCP) to assess their past performance in preventing incompatible land uses within the airport environs. Modifications to these measures recommended for consideration as part of the NCP update process are presented. In addition to assessing the adequacy of the two measures, this memo looks at the list of land use compatibility strategies presented to NTAG on September 18, 2008, and discusses how these strategies might be merged as appropriate into the original NCP Measures 9 and/or 10 or whether additional measures should be included in the current update.

## Review

### ***NCP Measure 9***

**Continue to urge the City of San Diego to prohibit incompatible land uses in terms of the operation of Lindbergh Field under the California Noise Standards.**

**Assessment.** As worded, this measure is directed first at the Airport Authority—and the Port of San Diego as the prior airport operator—to “urge” the City of San Diego to act in the manner indicated. The responsibility for implementation, though, rests fully with the City as that entity has final authority over most land use development within its jurisdiction. To the extent that implementation has been inconsistent since the FAA approval of the original NCP, NCP Measure 9 may be deemed inadequate and should be modified to promote better implementation in the future.

The City took major strides toward preventing incompatible development around SAN when it adopted the Airport Environs Overlay Zone (AEOZ) and Airport Approach Overlay Zone (AAOZ) ordinances in 1997. These zones are discussed in detail in HMMH’s September 5, 2008 memo entitled “*Effectiveness of Existing Noise Compatibility Program Measures.*” Briefly, the ordinances contain the following provisions.

- *Airport Environs Overlay Zone.* The AEOZ provides supplemental land use regulations for property surrounding SAN (and other airports within the City of San Diego). The regulation is intended (1) to ensure the compatibility of the land uses around the airport(s) through implementation of Comprehensive Land Use Plans (CLUPs) [now referred to as Airport Land Use Compatibility Plans (ALUCPs)] as prepared and adopted by the San Diego County Airport Land Use Commission (ALUC); (2) to provide a means for property owners to receive noise and safety hazard information as it may affect their property; and (3) to ensure that provisions of the California Airport Noise Standards, under Title 21 of the California Administrative Code [now called California Code of Regulations (CCR)] for incompatible land uses are satisfied.

With regard to the third of the above purposes of the AEOZ, the reference is to the State Airport Noise Standards. Of particular relevance to actions by the City of San Diego is that the regulations provide exceptions for otherwise incompatible land uses within the airport noise impact boundary where an “avigation easement for aircraft noise” has been acquired by the airport proprietor. Although this provision is intended to address existing incompatible uses, nothing in the regulation precludes its application to new development. Receipt of an avigation easement as a condition for new development within the noise impact boundary is thus paramount to the airport’s ability to prevent further non-compliance with the state standards.

- *Airport Approach Overlay Zone*. The purpose of the AAOZ is to protect FAA-established approach paths at SDIA from encroachment. The AAOZ accomplishes this by means of supplemental regulations for the property surrounding the airport. The ordinance is designed primarily to limit the height of structures in and adjacent to the published approaches into the airport and does not directly address issues of noise compatibility. Nevertheless, the protection that the AAOZ provides for the airport airspace indirectly affects noise compatibility by helping to prevent the introduction of new constraints into the flight paths or adversely affecting the air navigation procedures available to aircraft using the airport. As a first step, the AAOZ requires the project applicant to secure from the FAA either an Airspace Determination or a letter indicating that notice to the FAA is not required. In general, the intent of the AAOZ is to preclude new development considered to be a hazard to air navigation. However, the ultimate decision to approve, deny, or delay a project is solely at the discretion of the City Council. The AAOZ does not require the City to deny the project, or the applicant to revise it, should the FAA return a finding that the project would be a hazard to air navigation.

As tools for implementing the NCP Measure 9, the AEOZ and, to a lesser extent, the AAOZ have been valuable, but have fallen short of complete success in achieving the objectives of avoiding new incompatible land uses near the Airport. There are no doubt a myriad of reasons why this has been the case, but three apparent causes are worth examining.

Perhaps foremost among the reasons for inconsistent application of the ordinances has been a limited awareness and understanding of the compatibility criteria and requirements established. This problem was particularly true in years past. A heightened recognition of airport land use compatibility issues in recent years—and particularly since 2003 when the Airport Authority assumed the ALUC role in the County—has led to more consistent implementation by the City. Still, it is our understanding that some development—or often redevelopment—projects which state law and ALUC policy dictate should receive ALUC review are not being submitted to the ALUC. Additionally, avigation easements are not always being granted as a condition for development approval in situations where this should be done.

Another factor—one which is central to the inconsistent implementation of NCP Measure 9—has been confusion and/or disagreement over which set of noise contours are to be used. Over the years, numerous sets of SAN noise contours have been produced for different purposes. Some have reflected airport activity as of the then-current point in time. Compliance with California Airport Noise Standards (Title 21) is judged on this “current” basis which means that the contours used change each time compliance is re-evaluated. Other contour sets represent projections of future impacts. Here, too, there are differences: the NCP uses a 5-year projection while the ALUCP being prepared for the ALUC requires a 20-year time horizon. The new ALUCP is expected to rely upon the 2030 noise contours included in the environmental documents for the SAN airport master plan (AMP) recently adopted by the Airport Authority.

Also confusing is that the AEOZ contains a map depicting only the CNEL 60 dB contour for 1999 while the AEOZ text refers to the 1999 CNEL 65 dB contour as the area within which dedication of avigation

easements is required for certain development. Clarification of this apparent disparity would be beneficial, but in any case, the 1999 contours are not the appropriate choice either for compliance with Title 21 or for long-range compatibility planning under the ALUCP.

A third issue is that the AEOZ allows the City to unilaterally grant exceptions to the regulations. The AEOZ gives the City Manager authority to grant an exception to the requirements for proposed development that is “minor, temporary, or incidental and is consistent with the intent” of the ordinance. Potentially more significant exceptions to the AEOZ may be made by the City Council. Provision for such exceptions is understandable, but not consistent with Part 150 or Title 21.

In summary, the addition of the AEOZ and AAOZ to the City’s zoning code have provided a semi-effective framework for preventing new incompatible land uses around SAN in accordance with the intent of NCP Measure 9, but the inconsistent implementation possibly due to the above-noted shortcomings could continue to create problems in the future.

**Recommendations.** Measure 9 is directed specifically at the City and is considered a “preventive” measure under 14 CFR Part 150. It is also classified as an alternative “*for which the requisite implementation authority is vested in a local agency or political subdivision governing body, or a state agency or political subdivision governing body*” other than the airport operator. Hence, changing the wording of Measure 9 could or would do nothing to obligate the City to act in accordance with the intent of the measure. That said, modification to the wording of NCP Measure 9 would help clarify its purpose and facilitate implementation by the City of San Diego.

One change that should be considered is to replace “urge” with a stronger operative word or phrase. Stronger, but still somewhat open-ended wording would be: “the Airport Authority will support the City of San Diego’s efforts ...” Even more direct language would be to say that “the Airport Authority will take steps as necessary to ensure that the City of San Diego ...” We suggest that strong wording is appropriate. Even though neither Part 150 nor Title 21 requires action on the part of the local land use jurisdiction that is not the airport operator, state statutes governing airport land use compatibility planning do so. Once the ALUC adopts an ALUCP for a particular airport, the affected jurisdictions must either modify their general plans to be consistent with the ALUC’s plan or take certain steps to overrule the ALUC. The NCP should reflect this obligation.

A second modification is to be more explicit with respect to the noise contour set and noise criteria to be applied. While NCP Measure 9 refers to the “California Noise Standards,” it does not specify a particular year or set of noise contours. In any case, the SAN contours used for Title 21 purposes are “current” contours which, even when future improvements in aircraft noise emissions are considered, are generally smaller than contours representing projected higher levels of activity. Consequently, a more forward-looking set of contours would be better suited to long-term land use compatibility assurance.

A final modification should be to make the City’s exceptions to the AEOZ standards contingent upon compliance with the current and forthcoming versions of the SAN ALUCP or upon approval by the ALUC. By doing so, the exceptions provisions of the AEOZ would be limited by the requirements of the ALUCP. Furthermore, and should the City decide to grant an AEOZ exception that is inconsistent with ALUCP criteria, the City would also have to take the steps required by the statutes for overruling the ALUC. Such action could only be taken by the City Council because the City Manager alone does not have the authority to overrule the ALUC.

Compiling these modifications, the former NCP Measure 9 would be replaced with the following:

**Measure:** *The Airport Authority will continue to urge the City of San Diego to prohibit new incompatible land use development within the SAN environs. For noise-sensitive land uses proposed for development within the CNEL 65 dB contour, the Airport Authority will continue to urge the City to obtain aviation easements and engineered structural designs that provide compatible interior noise levels per Table 1 of 14 CFR Part 150.*

**Description:** In determining whether proposed development is compatible with the Airport, the City must take into account the standards established in 14 CFR Part 150 (federal), as well as the requirements of California Title 21 (state) and the SAN ALUCP (local). City of San Diego approval of new land use development must be conditioned upon the development's compliance with the noise compatibility criteria established in the current and forthcoming versions of the SAN ALUCP adopted by the ALUC. The current ALUCP incorporates criteria ensuring that new development will comply with the requirements of California Title 21 and the new ALUCP is anticipated to continue these criteria. Key to residential land use compatibility under Title 21 are sound insulation and aviation easements. The current SAN ALUCP requires sound insulation of new dwellings sufficient to limit the intrusion of aircraft-related noise to no more than CNEL 45 dB in all habitable rooms. Additionally, for any new residential development within the CNEL 60 dB contour, an aviation easement must be dedicated to the Airport Authority.

The City must not grant exceptions to the AEOZ or AAOZ ordinances unless the proposed development has been submitted to the ALUC for review and found consistent with ALUCP criteria.

The Airport Authority will take steps as necessary to ensure City compliance with these compatibility measures.

### **NCP Measure 10**

**The Port District [Airport Authority] will encourage the City of San Diego to conduct a formal review of its land use policies, regulations and practices as they affect Lindbergh Field to protect the ability of the airport to operate and to address land use restrictions in the vicinity of Lindbergh Field on uses that are or might be incompatible with airport operations.**

**Assessment.** The status of this measure was discussed in detail in HMMH's September 5, 2008, memo entitled "Effectiveness of Existing Noise Compatibility Program Measures." Measure 10 has partially been implemented through City adoption of the AEOZ and AAOZ, but neither of these ordinances represents the comprehensive and formal review that the measure appears to envision. In essence, though, such a review is a component of the on-going work by the ALUC to prepare a new ALUCP for SAN. City staff is working closely with the ALUC staff and other interested parties to formulate the policies to be included in the ALUCP and to assess the relationship between those policies and current City plans and policies.

Although conceptually close to what is needed, the current wording of Measure 10 falls short in specifics. It also could benefit by reference to the ALUCP preparation process and subsequent implementation actions that the City should be expected to take.

**Recommendations.** Revised wording for Measure 10 suggested below is intended to more directly reflect the Airport Authority's and City's respective roles in the ALUCP process.

**Measure:** *The Airport Authority, in its role as the San Diego County Airport Land Use Commission, will continue to encourage City participation in the compatibility planning process for SAN and will assist the City in reviewing and, as appropriate, modifying the City's plans, policies, and ordinances to best address airport land use compatibility concerns.*

**Description:** The City's continued active participation in preparation of the SAN ALUCP is essential both to ALUC adoption of the plan and to subsequent City implementation of the compatibility criteria. Part of the SAN compatibility planning process involves review of the City's General Plan, Community Plans, zoning ordinances, and other policy documents to assess whether they are consistent or conflict with ALUCP policies. ALUC and City policies both should be designed to ensure that new development near SAN does not result in compatibility conflicts.

## Merging Land Use Compatibility Strategy Options

Of the thirteen potential land use compatibility strategy options presented to the NTAG on September 18, 2008, four would be classified as being the direct responsibility of the Airport Authority and would not lend themselves to being merged with either NCP Measure 9 or 10. These are:

1. State Airport Noise Standards Variance;
2. Quieter Home Program;
3. Avigation Easement Acquisition; and
4. Acquisition Assurance Program.

Of these four options, only the State Airport Noise Standards Variance is required by law (as long as there are any noncompatible land uses within the Airport's noise impact area). The Quieter Home Program is already included in the previously approved SAN Part 150 NCP and is expected to continue as a measure in the NCP update. As for possible Avigation Easement Acquisition Program and the Acquisition Assurance Program measures, little or no interest was shown in either at the NTAG meeting.

Of the remaining nine options, seven would be chiefly the responsibility of the City:

5. City Zoning Ordinances: AEOZ and AAOZ;
6. Sound Attenuation Requirements for New Construction;
7. Avigation Easement Dedication Requirement;
8. City General Plan and Zoning Land Use Designations;
9. City Adoption/Implementation of Prior CLUP;
10. City Involvement in ALUCP Preparation; and
11. Limit Conditions for Allowing New Residential Development Inside CNEL 65 dB Contour.

All of these seven strategy options are reflected either directly or indirectly in the revised wording of NCP Measure 10 recommended above. If more explicit reference to any of these strategies is deemed desirable, the description of the measure could be expanded accordingly.

The two remaining options (8 – Disclosure Requirements for Real Estate Transactions; and 12 – Criteria/Restrictions on Existing Residential Uses inside the CNEL 65 dB Contour) are both the shared responsibility of the City and the ALUC. Again, both are indirectly incorporated into the revised NCP Measure 10 and its description.

## **Additional Proposed NCP Airport Land Use Compatibility Measure**

The revised wording and descriptions of NCP Measures 9 and 10 both focus on the relationship between the Airport Authority, particularly in its role as the ALUC, and the City of San Diego with regard to compatibility planning around SAN. Neither measure, though, specifically defines the actions that the Airport Authority can and should take as the ALUC. As the ALUC, the Airport Authority has powers to promote airport land use compatibility that are not available to other airport operators except when the same entity has jurisdiction over both the airport and the surrounding land uses.

Preparation of the SAN ALUCP is the primary vehicle by which the ALUC can define compatibility criteria for new development, including within the CNEL 65 dB noise impact area. Incorporation of a measure into the NCP describing the Airport Authority's role as the ALUC and its responsibility for preparation of the SAN ALUCP could, subject to FAA approval, make some of the ALUC functions eligible for FAA funding assistance.

The following new measure is recommended for inclusion in the NCP.

**Measure:** *The Airport Authority will continue to serve as the San Diego County Airport Land Use Commission in accordance with state law.*

**Description:** State law establishes the Airport Authority as the San Diego County ALUC. The functions of the ALUC are directly supportive of the objectives of 14 CFR Part 150 in that both are, among other things, directed at preventing new land use development that would expose the public to high noise levels or that could adversely affect airport operations. In this capacity as the ALUC, the Authority will pursue preparation and adoption of an Airport Land Use Compatibility Plan for SAN, will update the plan as may be necessary in the future, and will utilize the plan to fulfill its duty to review local agencies' plans and development actions for compliance with noise compatibility measures.