DRAFT REPORT

ON

LEGAL AND INSTITUTIONAL ANALYSIS OF AIRCRAFT AND AIRPORT NOISE AND APPORTIONMENT OF AUTHORITY BETWEEN FEDERAL, STATE, AND LOCAL GOVERNMENTS

FOR

ENVIRONMENTAL PROTECTION AGENCY AIRCRAFT/AIRPORT NOISE REPORT STUDY

1 JUNE 1973

TASK GROUP 1

APPENDIX B

ELIZABETH CUADRA, CHAIRWOMAN

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APPENDIX B

ELIZABETH CUADRA, CHAIRWOMAN

Due to clerical error, the page numbers in this Appendix were inadvertently labeled "A" instead of "B".

APPENDIX B

FORMAL RECOMMENDATIONS* BY
TASK GROUP MEMBER ORGANIZATIONS

The following documents are the collected recommendations of all Task Group 1 member organizations which responded to EPA's request to propose recommendations. They were reviewed and considered by EPA staff in preparing the "Recommendations" section of the Task Group 1 report. They are photographically reproduced here in order to preserve intact, for the record, the positions of the individual organizations.

- Airport Operators Council International
- Aircraft Owners and Pilots Association
- Air Transport Association of America
- Council of State Governments
- Environmental Defense Fund and Sierra Club
- Janet Gray Hayes, San Jose City Council
- National League of Cities/U.S. Conference of Mayors
- National Organization to Insure a Sound-Controlled Environment (NOISE)
- Natural Resources Defense Council
- Town-Village Aircraft Safety and Noise Abatement Committee (TVASNAC)
- U. S. State Department

*This appendix is subject to revision as additional member organizations submit their recommendations, or submit revised recommendations, up to and including June 14, 1973.

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May 3, 1973

Ms. Elizabeth Cuadra
Office of Noise Abatement
Environment Protection Agency
Washington, D.C. 20460

Re: EPA Aircraft/Airport Noise
Task Force I

Dear Ms. Cuadra:

Enclosed herewith is Chapter 7 of the AOCI Policy Handbook which sets forth the AOCI position on the aircraft noise problem.

AOCI's preliminary recommendations to achieve the objectives set forth in Chapter 7 of its Policy Handbook would include:

1. Increased Federal appropriations (not subject to impounding) necessary to advance the state of the art of aircraft and engine noise abatement and to expedite application of the results of such research to existing aircraft;

2. Federal legislation to finance the cost of aircraft noise abatement including the cost of retrofit; and

3. Federal legislation which would have the effect of transferring to the Federal Government the noise costs now placed upon the airport operator under Griggs.

Very truly yours,

Joseph Lesser
Assistant General Counsel

Enc.

CHAPTER 7 -- ENVIRONMENTAL COMPATIBILITY OF AIRPORTS

7.10 Airports and the Environment

AOCI will continue to support the proper and orderly growth of airports as a vital part of the total transportation system. Moreover, the usefulness and efficiency of existing airport facilities should be maximized. Additionally, activities on the surface of airports should be conducted so as to minimize the impact of aircraft noise and other pollution on surrounding communities.

AOCI will continue to promote an ever-increasing harmonious relationship among airport operators, aircraft operators and the affected government. Concern for valid social, economic, and environmental objectives will be given high priority when considering the operation of existing airports or the development of new airports.

7.11 Cooperative Action for Compatible Airport Development

Conservation of natural resources is essential in a society striving to satisfy the needs of an expanding population. Cooperation, rather than confrontation, between environmental interests and airport operators is the more effective procedure in achieving airport and community development which is mutually compatible. Those concerned with the environment should use their talents and expertise in a joint venture with the airport operator toward realizing the proper balance between man's transportation needs and environmental requirements. Further, environmental interests must be alert, lest their valid concerns about airport development be distorted by those who would hide their private interests behind the shield of environmental concern.

7.20 Aircraft Noise Pollution

Aircraft noise pollution constitutes the primary constraint upon the capacity of the aviation system. The extreme difficulty encountered in the construction of new airports or expanding existing airports is primarily the result of community opposition to aircraft noise. Noise

annoyance is a national issue affecting the interstate commerce of the United States and threatening both the national and international air transportation systems. The aircraft noise problem must be resolved, with assistance by airport operators, on a national level through a tripartite attack by the Federal Government, the airlines and the aircraft manufacturers to significantly reduce noise at its source (the aircraft engine), to strengthen aircraft noise abatement operating procedures and to encourage compatible land use in new airport development.

7.21 Reduction of Noise at the Source

Reduction of aircraft noise should encompass a program for the current fleet of jet aircraft as well as the development of "quiet engines" for all future jet aircraft. At the inception of commercial jet operations, aircraft technical efficiencies and operating economies were deemed paramount. The cost of noise annoyance was simply passed on to the people who suffered the annoyance. This social cost was not then, and still is not, included as a legitimate cost of aircraft design and operations.

In 1968, the Congress responded to the problem of aircraft engine noise by enacting Public Law 90-411, recently implemented in part with the issuance of Part 36 of the Federal Aviation Regulations. AOCI supports full and early implementation of the Congressional intent of P. L. 90-411 as it encompasses noise reduction of past and future, subsonic and supersonic, piston and jet, long-haul and V/STOL aircraft. Special, substantially more stringent standards should be established for V/STOL aircraft.

7.22 Importance of Noise Research and Development

The aircraft and engine noise abatement work of the National Aeronautics and Space Administration as well as other noise abatement research projects deserve full support. Additional research should be initiated in order to advance the state of the art of noise abatement and to achieve a substantial reduction in the present noise limits contained in Part 36, Appendix C of the Federal Aviation Regulations. While basic research is essential for long-range goals, there is an urgent need for expediting application of research results to achieve immediate reduction in noise of existing aircraft.

7.23 Noise Abatement Retrofits

Retrofit is a technique for reducing the noise of existing aircraft by modifications to the engines, the nacelles, or both. AOCI supports retrofit programs as principal means of substantially reducing aircraft noise for the current turbofan fleets. In an Advance Notice of Proposed Rule Making on Civil Airplane Noise Reduction Retrofit Requirements, the FAA has recognized "the obvious public need for relief" and the fact that noise deters airport development and expansion as "two aspects in the need for retrofit." The retrofit ANPRM also recognizes that the retrofit studies conducted for the National Aeronautics and Space Administration [Boeing and Douglas] and for the Federal Aviation Administration [Rohr] indicate that the basic concepts of noise suppression of turbofan engines are valid acoustically. Further, materials and fabrication technologies have been developed to translate these concepts into hardware which has proved economically reasonable and technologically practicable since it is now used to reduce the noise generated by certain currently noise-certificated turbofan engine-powered airplanes.

In the past, the FAA has moved slowly in the area of aircraft engine retrofit, and the schedule on retrofit rule making has already slipped by 18 months. In the end, the FAA may simply conclude that aircraft retrofit is not economically reasonable. AOCI urges the FAA and the entire aviation industry to support and expedite action on the retrofit program as crucial to the future growth of aviation. All parties concerned with the retrofit program are urged to cooperate in implementing the findings of the NASA and FAA studies not later than 1976. Additional delays to await results of new research programs cannot be justified.

7.24 Financing Retrofit

The dollar cost of retrofit is a fraction of the cost of land acquisition on a national basis. More significantly, the legal, social, political and economic impact of relocation of hundreds of thousands of people in a land acquisition program on a national scale is unacceptable.

Because the benefits of retrofit will be shared by a large number of people, it is not suggested that the airlines alone should bear the full financial burden. There are alternative plans which should be considered. They include: accelerated tax depreciation benefits on

the cost of engine retrofit by the airlines, Federal loans or grants, user taxes (a fee for enplaning passengers and a small charge on air freight waybills).

7.25 Part 36 of the Federal Aviation Regulations

The noise limits of Part 36 of the Federal Aviation Regulations should not be degraded by a system of tradeoffs and allowances. The noise limits of Appendix C should be the maximum level for noise certification of aircraft at this time. More stringent noise standards than those of Part 36 should be applied to future aircraft at the earliest possible date. Such stricter standards should be made mandatory for all aircraft entering service after a specific date, but not later than 1976. The takeoff noise measuring point should be located so as to reflect existing airport-community distances.

7.26 Application of Noise Limitation to All Aircraft

AOCI supports a policy of uniform application of Federal Aviation Regulation Part 36 standards for all present and future aircraft, including the Boeing 747, the DC-10, the L-1011 and the supersonic transport. The Federal Aviation Administration should assume responsibility for bringing all aircraft within the already-established limitation at the earliest possible date and should immediately make public a firm time schedule for such action.

AOCI fully supports the prompt adoption of FAA Notice of Proposed Rule Making 72-19, with respect to regulations requiring that new production turbojet and transport category aircraft with maximum weights of more than 75,000 pounds and receiving their airworthiness certificates after July 1, 1973, comply with the noise standards of Appendix C of Part 36 of the Federal Aviation Regulations irrespective of type certification date.

7.27 Supersonic Transport

The problem of establishing maximum noise levels for supersonic aircraft requires uniform action on a national level. Federal legislation or regulation is needed requiring that no supersonic aircraft be permitted to operate at any airport in the United States unless such aircraft can comply with the noise limits specified for new subsonic jet aircraft in Appendix C of Part 36 of the Federal Aviation Regulations.

7.29 Local Noise Abatement Regulations

The problem of aircraft engine noise is a national problem, and efforts to control and abate it should be established at the national policy level. The Federal Government should assume responsibility in this area rather than attempting to shift responsibility to individual airport operators. The imposition of local regulations is not an effective approach to solve a problem clearly nationwide in scope. However, in the absence of effective Federal action to reduce the noise of existing aircraft, some airport sponsors have promulgated noise abatement regulations based on and suited to the characteristics and operation of individual airports in order to reduce aircraft noise to the extent that it is possible.

7.30 Night Curfews

An increasing number of night curfews are being imposed at airports in some parts of the world. Therefore, airport operators should lead in a special cooperative effort of the entire aviation industry to reduce aircraft noise with special attention given to a review of all aircraft operational activities. However, the disruption of airport operations through a nighttime curfew is strongly opposed.

7.31 Reduction of Noise Through Aircraft Operating Procedures

AOCI supports the reduction of noise through aircraft operating procedures which include the use of preferential runways, noise abatement takeoff procedures, turns away from heavily populated areas, steeper approaches and ground run-up procedures. Utilization of these techniques will effect only a partial reduction of the aircraft noise problem, but they should be implemented promptly, consistent with safety in any noise-sensitive area. They will provide additional noise reduction even where noise-certificated or retrofitted aircraft are in operation.

7.32 FAA and Air Traffic Control

The Federal Aviation Administration should initiate, support and implement those programs which would reduce noise in the vicinity of airports through air traffic control procedures consistent with operational safety.

The FAA should continue to establish a systematic noise abatement plan on a national level, but the plan must remain responsive to the unique characteristics of individual airports and unique safety and operational characteristics of each aircraft.

7.50 Smoke and Invisible Pollutants

The aviation industry is highly vulnerable to public charges of smoke pollution because the exhaust of jet aircraft is more highly visible than many other forms of smoke pollution. Although aircraft smoke emission constitutes a small portion of the total air pollution problem, AOCI notes with satisfaction current programs of the airlines to eliminate smoke pollution. In addition, airport operators themselves have taken such steps as are necessary to reduce smoke emissions from heating plants, incinerators and other airport functions they control. Reduction of visible aircraft smoke pollution is in the public interest, but visible smoke abatement should not be exchanged for permissive emission of invisible pollutants. The FAA/DOT, HEW, Environmental Protection Agency, Air Transport Association and other organizations should promote research in this area. This problem, like the problem of noise pollution, demands an international/national solution and cannot be solved by state/local regulation.

AOCI urges the immediate issuance and implementation by the Environmental Protection Agency of rules and regulations relating to aircraft emissions.

7.60 Water Pollution

Operations at airports, under some circumstances, might be the source of potential negative influence on surrounding and subsurface natural water systems. AOCI, therefore, supports efforts for the adoption of physical and operating techniques which assure that drainage and run-off waters are controlled in a manner which minimizes the opportunity for that negative influence to occur.

7.70 Compatible Land Use

AOCI urges the planning and development of compatible land use adjacent to airports. In those airport communities already developed with incompatible land uses, conversion to compatible usage is extremely difficult and represents only a partial solution to the noise problem. The complete dislocation of many thousands of people from their established communities does not constitute a politically or socially viable alternative, and land acquisition costs are economically prohibitive.

Land use planning is highly desirable at new airports. In the case of existing airports, communities and the airport should work together to regulate future land use in the vicinity of the airport.

7.90 Other Environmental Matters

While aircraft noise is the primary aviation environmental problem, airport operators are also concerned with other ecological and environmental problems which cumulatively may reduce public acceptance of necessary airport development and modernization. Effective Federal regulatory actions and voluntary industry programs for the enhancement of the environment are strongly supported.

AIRCRAFT OWNERS AND PILOTS ASSOCIATION/WASHINGTON, D.C. 20014/Tel: (301) 654-0500/cable address: AOPA, Washington, D.C.

May 10, 1973

Ms. Elizabeth Quadra
Office of Noise Abatement and Control
Environmental Protection Agency
Washington, DC 20460

Dear Ms. Quadra:

Enclosed is AOPA's position paper of some aspects of the Aircraft/Airport noise situation. I realize that it is past the deadline for comments on Chapter One drafts, but it is being sent as a matter of record.

Cordially,

Charles P. Miller

Charles P. Miller
Consultant

RECEIVED
15 MAY 1973
TG 1/146

Aircraft Owners and Pilots Association

AOPA VIEWS ON AIRCRAFT/AIRPORT NOISE ABATEMENT

Elimination of unnecessary aircraft noise and reduction of necessary sound emission in the vicinity of airports to the lowest practicable minimums are objectives the Aircraft Owners and Pilots Association share with the Environmental Protection Agency. Working out means for achieving these goals must be done with care in order to avoid doing great harm to this country's vital air transportation system.

There is general agreement that aircraft/airport noise is civil aviation's Number One problem today--a problem that must be solved if air transportation is to reach its full potential. This is primarily a problem of air carriers at airports in congested population areas. But it also is of concern to general aviation, particularly to most of its business-type jet aircraft. Propeller-driven airplanes, which make up most of the general aviation fleet, of about 140,000 aircraft, are not considered as presenting a noise problem at most airports. The occasional noise complaint comes from a community where a small airport is located which does have jet operations.

The more than 171,000 members of the Aircraft Owners and Pilots Association (AOPA) own or lease over 84,000 airplanes, about 60% of the general aviation fleet. "General aviation" in this country is commonly defined as all civil aviation except airline operations. It's aircraft fly about 37% (92 million) of the passengers in intercity air travel; provide practically all of the industrial-aid flying and all aerial application for agriculture and forestry; provides air transportation on demand to 43% of the 1,000 largest business enterprises in the nation. General aviation planes operate at practically all of the 12,000 airports and landing places, including the approximately 531 airports served by the certificated airlines.

AOPA surveys show that the average member uses his airplane for both business and recreational flying, very much as he uses his automobile. The role of the lighter general aviation airplane will become even greater in the nations' economy if the trend toward decentralization and dispersion of economic enterprises from congested urban areas to suburban and poverty-stricken rural areas accelerates.

Military and airline noise, air pollution and congestion have antagonized the public with consequent impact on general aviation, although the light airplanes' contributions to the cause of the antagonism are small. Alleviating aircraft/airport noise, the greatest irritant, must come about quickly if the people on the ground are to be appeased.

Priority attention, in our opinion, must be given to the primary cause of the noise problem--the jet engine. Once attenuation has been achieved, other proposed moves such as institutional changes and complicated operations at the airport will recede in importance. Unified research must be stepped up to develop engines with noise levels 15-20 EPNdB below FAR 36 in time for the next generation of air-carrier jet aircraft. At the same time, research should continue on retrofitting present-day jets so that meaningful reduction in noise levels may be achieved before the next generation arrives, without degradation of performance of the engine or at excessive cost.

The National Aeronautics and Space Administration has made strides in quieting the jet engine and should continue on this course with ample funds to accomplish its goals. The Federal Aviation Administration's research in this field should be absorbed by NASA.

Who will bear the cost? The Federal Government should provide funds for the development of technology for quieting the jet, but private industry should pay the costs for retrofitting. It is realized that the air carriers are

burdened with near and longterm debts accumulated mainly for the purpose of acquiring jet airliners now in use, but retrofitting costs should be handled as a business expense. Other industries are required to bear the expense of meeting costs related to environmental requirements. It might be necessary for the Federal Government to make available long-term loans to the air carriers at low interest rates in order to bring quicker relief to people on the ground.

While the major problem in aircraft noise abatement is related to air carrier and business jet operations, AOPA recognizes the need for quieter propeller-driven aircraft. In a statement prepared for hearings by the Congressional Committee on Aeronautical and Space Sciences regarding the NASA authorization for Fiscal Year 1974, AOPA said in part:

"We need small aircraft that are quieter both internally and externally. External noise must be reduced to satisfy the public on the ground and ameliorate its resistance to airport development and aircraft operations. Noise attracts attention which is undesirable. Internal noise must be reduced to eliminate loss of hearing by those in the aircraft. Few pilots have flown very much without sustaining a loss in hearing capacity. Noise reduction will make flight more pleasant and enable pilots to hear radio communications more clearly. Conversation should be possible at normal voice levels.

"We think primary efforts should be directed at eliminating noise at the source rather than creating land buffers around airports which is an unsatisfactory solution for only a part of the problem. Thus we urge attention to aircraft construction techniques that give a smooth flow of air and reduce metal 'canning', quiet piston engine development and engine muffling and silencing, propeller design for noise reduction, and soundproofing techniques to minimize whatever noise remains."

General aviation propeller-driven aircraft being built today are much quieter, on the whole, both internally and externally, than those produced 10 or 15 years ago. Powerplants have been improved and airframe manufacturers are more conscious of the need of reducing fuselage noise where possible. It is hoped that current NASA research will permit the production of even quieter propeller-driven aircraft planes in the future.

Technology exists for dampening the noise of single-engine propeller-driven aircraft. An experimental "quiet" light airplane was successfully flown in May 1947 at Langley, Virginia, by the National Advisory Committee for Aeronautics (predecessor of the National Aeronautics and Space Administration), but manufacturers were unable to convert the experimental design into a commercially feasible airplane. NASA resumed research on the propeller-type aircraft noise problem in 1972. AOPA's statement on NASA funding was made in an effort to get Congressional support for the continuance of this research. Using techniques developed by NACA in the 1940s and other noise suppression means, a manufacturer made a quiet plane for use by the U.S. Army in night time reconnaissance in Vietnam with startling results. Flying 100 to 200 feet above the ground, the Q-Star-type planes could not be heard above the ambient noise level. Further research in this area by NASA should be productive.

While quieting the jet engine is by far the major goal in aircraft/airport noise abatement, in AOPA's opinion, there are other problems which also must receive attention:

1. Compatible land use in the vicinity of airports. Unless the land is properly zoned, the building of a new airport is a signal for the acquisition of land nearby for the building of residences, small business and other non-aviation uses, mainly because the cost of land is cheaper there than in other

parts of the community. It is not long until residents surrounding the airport and its approaches are faced with an acute noise situation for which there is no easy solution. Zoning after the fact presents a difficult task and is expensive if the necessary property is to be obtained for clear areas. Unfortunately, planning for the future appears to be the immediate solution to this problem. This should be done by the states and local areas. The Federal Government can help by stipulating, in Sponsors Agreements, that adequate zoning for clear areas be made before a Federal airport-aid grant is approved.

2. Noise level standards. The airplane itself should carry the major portion of the burden of bringing down noise levels on approaches and at airports. FAR 36 sets standards for airline and business-type jets and high performance propeller-driven transports. Reasonable standards on a national basis also should be set for general aviation propeller planes. This would enable each pilot to know the limits that his aircraft could reach. Compliance with standards now being set up for ICAO member-countries would facilitate transit abroad. It also would aqford a guideline for manufacturers producing aircraft for export.

3. Curfews. AOPA is basically opposed to curfews on aircraft operations, believing that widespread stoppage of night flights would have a staggering effect on the nations' economy and the convenience of air transportation. In the event curfews are determined necessary, they should be invoked on a national, rather than local, scale. Having each community establish its own curfew could spell chaos for the general aviation pilot on an interstate flight.

4. Preemption. Ample precedent for Federal preemption of the navigable airspace has been established in the courts. The Supreme Court of the United States now has before it a case (Lockheed v. Burbank) which also involves

preemption. It is our hope that preemption by the Federal Government be sustained. Operating a national transportation system under state and local laws would be extremely difficult, to say the least.

These are but a few of the facets of the aircraft noise problem. The kind of noise environment we all desire can be achieved. But to do it we must all cooperate. It is a time for sound and rational decisions.

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May 8, 1973

Ms. Elizabeth Cuadra
Office of Noise Abatement and Control
Environmental Protection Agency
1835 K Street, N. W.
Washington, D. C. 20460

Dear Ms. Cuadra:

Enclosed are our recommendations as to legal/institutional framework.

Attachments A and B referred to in paragraph 11 are attachments 5 and 6 to our letter to you dated May 2 with reference to the parts prepared by the Port Authority of New York and New Jersey.

Sincerely,

Lyman M. Tondel, Jr.

Lyman M. Tondel, Jr.

Enclosure

I-A-17

May 8, 1973

Task Group I

EPA AIRCRAFT and AIRPORT NOISE STUDY

Recommendations as to Legal/Institutional Framework

1. Unified Federal Regulation of Air Commerce is Necessary. The EPA should report (a) that the Commerce Clause of the Federal Constitution may require that the Federal Government control (1) all aspects of the national system of air transportation as one of "those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority" (Southern Pacific Company v. Arizona, 325 U.S. 761 (1945)), and (2) the use of the navigable airspace, because it is in the public domain; and (b) that, in any event, any Federal legislation for the regulation of aircraft noise should expressly so assert and reaffirm.

2. Scope of Federal Preemption of State and Local Police Power. In response to the fourth assignment given the EPA by Section 7(a) of the Noise Control Act of 1972, the EPA should report that insofar as the exercise of the police powers of state or local governments for the purpose of reducing aircraft noise may affect the national system of air transportation or the use of the navigable airspace, such powers have been preempted by the Congress, and that whether the

regulation of aircraft entry into the navigable airspace is included in the preemption is presently before the United States Supreme Court in the Burbank case.

3. Rights of Airport Proprietors. The EPA should report that the extent of airport proprietors' rights to regulate in an effort to reduce airport noise depends on the terms of the leases and the law of the particular state where the airport is located and therefore may vary from airport to airport, and that the extent to which any such rights have been federally preempted, limited by the Commerce Clause or are in conflict with federal law, has not been authoritatively adjudicated.

4. The Need for Federal Agency Authority to Protect Air Commerce from Fragmented State and Local Regulations. To the extent, if any, that Congress, or law apart from Acts of Congress, may permit state and local governments or airport proprietors to exercise their powers or rights in ways that would affect the national system of air transportation or the use of the navigable airspace, there should be expressly placed by Congress in the appropriate agency of the Federal Government the power to assure that the national system of air transportation, including the national system of interrelated airports, is not fragmented by restrictions imposed at the state, local or airport level.

5. Factors that Should be Considered in Appraising Effects on the Public Health and Welfare. In reporting on the effects of aircraft noise on public "health", the EPA should make a clear distinction between proven physiological effects on health or hearing, on the one hand, and annoyance, on the other. In reporting on the effects of aircraft noise on the public welfare, the EPA should take into account not only annoyance but also such factors as the welfare of the air transport system and the social benefits directly derived therefrom and the preservation of such indirect social benefits as availability of housing, employment opportunities and the well-being of the economy, both in the vicinity of the airport and on a national level.

In the latter evaluation, the EPA report should consider whether the general welfare is served best by any action which enlarges the possibility that persons living near airports may have increased rights or compensation from airport noise in situations where the levels thereof: (a) do not affect their health or hearing or, (b) do not realistically make it impossible or intolerable for persons to continue to live or work in those areas.

In this connection, the EPA should recognize in its report that its findings may be used as the basis for civil liability actions resulting from airport noise and

therefore should consider whether, in carrying forward the costly task of noise reduction, available national resources are better used by direct application to that effort than by compensating large numbers of airport neighbors, both near and far, on an ad hoc basis, in situations not required by the Fifth and Fourteenth Amendments.

6. The Need for Federally Funded Noise Restriction Efforts. The EPA report should recommend that sufficient funds be appropriated by Congress to continue, and finance the government's share of, an intensified and unified research and development effort by the Federal Government to reduce the noise at the source.

7. The Need for Exclusive Federal Standards of Aircraft Noise Measurement and Permissible Noise Levels. The EPA report should recommend that the setting of standards of noise measurement, aircraft noise standards, and aircraft noise levels should continue to be within the exclusive province of the Federal Government, and that aircraft noise levels should continue to be fixed, amended, and enforced by the FAA so as to prevent any increase in such levels and to reduce them, from time to time, in the light of considerations of safety, technological feasibility and economic reasonableness.

8. The Need for International Coordination in Reducing Aircraft Noise. The EPA report should recommend that United States airlines and aircraft and engine manufacturers should not be put at a disadvantage vis-a-vis

competitors from other countries because of the imposition, either by the United States or foreign countries, of noise level, operational or other restrictions or charges.

9. The Need for Increased FAA Responsiveness to Noise Abatement Suggestions of Others, and for Increased Public Participation. The EPA report should recommend that the FAA exercise, and be adequately financed and staffed to exercise, its existing authority over aircraft operations and the use of the navigable airspace more fully in the interest of noise reduction: for example, by encouraging the initiation, with public review by it, of noise reducing proposals, and by prescribing procedures to be followed by any applicant who desires to have restrictions imposed by the FAA at a particular airport which affect service at other airports as well (i.e., restrictions on night operations, or traffic flow, or types of aircraft that may be utilized); by providing adequate notice and opportunity for all interested persons, including EPA and other agencies of government, to be heard on the merits of such an application; and by ruling on such proposals promptly.

10. The Need for Better Airport Planning Guidance. The report should recommend that DOT and FAA, utilizing their existing authority, facilitate and expedite the development of airports consistent with both transportation and environmental requirements. To this end these agencies should be required

to prepare and issue detailed guidelines and timetables for applicants on behalf of airport development projects so that the applications may be more quickly processed in line with the aforesaid requirements. These guidelines should also include requirements for the submission of data required for the Secretary of Transportation to write his mandatory statement with respect to the effect of the airport development project on "the natural resources and the quality of environment of the Nation", and data showing compliance with standards for site location and airport design. These guidelines should be prepared in cooperation with EPA in order to expedite the preparation of satisfactory environmental impact statements under Section 102(2)(c) of NEPA when required with respect to airport development projects.

11. The Need for Effective Zoning and Other Compatible Land Use Measures. The States should be encouraged to adopt laws of statewide applicability along the lines of Attachment A and Attachment B so as to facilitate appropriate zoning against incompatible uses around airports -- particularly, but not exclusively, with respect to new airports, and existing airports which still have not been totally impacted. The report should further recommend that immediate, pragmatic efforts be taken by airport proprietors and state and local governments to preserve and increase compatible land use in the most noise-affected areas - the flight paths near airport boundaries.

Although a comprehensive and complete effort to solve the airport noise problem by compatible land use would be far too costly in the case of existing airports impacted by incompatible land use, it should be recognized that even after all measures involving reduction of noise at the source have been taken, there will remain a need for compatible land use planning. This need will be the greatest under the near reaches of the flight paths commencing at the airport boundaries. Even at existing, impacted airports, there are from time to time substantial opportunities to achieve compatible land use in such areas at a reasonable cost; but delay diminishes these opportunities. Therefore, the EPA should recommend that state and local governments and airport proprietors act as promptly as possible, in a pragmatic manner, to preserve and encourage compatible land use in the limited areas where the need is greatest and where opportunities exist.

Attachment A

Attachment #1

AIRPORT ZONING ACT

Chapter 1111, 1969 Session Laws

relating to the use and development of property in the metropolitan area affected by the operation of a new major airport; conferring certain powers and duties on the metropolitan council, the Minneapolis-Saint Paul metropolitan airports commission, and other government units in the area; and enlarging the territorial jurisdiction of the Minneapolis-Saint Paul metropolitan airports commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. NEW MAJOR AIRPORT; AIRPORT DEVELOPMENT AREA. Subdivision 1. METROPOLITAN COUNCIL; LAND USE CRITERIA AND GUIDELINES. Within 120 days after the selection by the commission of a site in the metropolitan area for a new major airport to serve as a terminal for regular, scheduled air passenger service and the approval thereof by the metropolitan council, the council shall adopt criteria and guidelines for the regulation of use and development of all or a portion of the property in the metropolitan area extending out three miles from the proposed boundaries of the site, or out five miles from the boundaries in any direction the council determines is necessary to protect natural resources of the metropolitan area, which property shall be known as an airport development area. The criteria and guidelines shall establish the boundaries of the airport development area and shall include a statement of goals and policies to be accomplished by regulation of the use and development of property in the area. They may relate to all types of land use and development control measures, including zoning ordinances, building codes, subdivision regulations, and official maps. The criteria and guidelines shall encourage controls for the use and development of property and the planning of public facilities for the purposes of protecting inhabitants of the airport development area from aircraft noise and preserving natural underground water reservoirs and other natural resources of the metropolitan area, and such purposes are hereby declared to be public purposes upon which land use and development control measures adopted by any government unit pursuant to law may be based. The criteria and guidelines shall be a part of the metropolitan development guide when it is adopted, and a copy of the criteria and guidelines and any amendment thereto shall be mailed to the governing body of each government unit having authority to adopt land use and development control measures applicable to the airport development area under Minnesota Statutes, Sections 360.061 to 360.073,

Chapter 394, or Chapter 462, or any other law, to the commission, and to the state commissioner of aeronautics. The council may amend the criteria and guidelines from time to time, and shall reestablish the airport development area whenever the airport site boundaries are altered.

Subd. 2. LOCAL ZONING AND LAND USE AND DEVELOPMENT CONTROLS. Upon the selection and approval of a site for a new major airport in the metropolitan area, all land within its airport development area which is not then zoned for other use is zoned for use exclusively for agricultural purposes, except that a prior nonconforming use established with reference to any lot or parcel of land may be continued and all land zoned by this subdivision for agricultural purposes may be rezoned by the appropriate government unit upon compliance with this subdivision. Thereafter the governing body of each government unit proposing to adopt a land use and development control measure applicable to the airport development area, or any amendment thereto, shall submit it to the metropolitan council for review, and within 120 days after receipt of the council's criteria and guidelines shall make and submit to the council for review such changes in its existing land use and development control measures as it deems necessary to make them consistent with the criteria and guidelines. The council or a committee designated by it shall hold a hearing on the control measures submitted by each government unit within 60 days after they are submitted, on written notice mailed to the governing body of the government unit not less than 15 days before the hearing. At the hearing the government unit shall be allowed to present all data and information which support the control measures submitted to the council. The council shall approve each such measure or amendment within 120 days after it is received, with such changes as it deems necessary to make it consistent with the criteria and guidelines, and the government unit submitting it shall take all actions necessary to put it into effect within 60 days after it is approved. If the council amends its criteria and guidelines, the procedures set forth in this subdivision shall be followed to insure that applicable land use and development control measures are consistent with the amendment.

Subd. 3. ENFORCEMENT OF LOCAL MEASURES. After the selection and approval of a site for a new major airport in the metropolitan area, no public or private use contrary to subdivision 2 or any land use and development control measure then in effect shall be made of the property to which it applies within an airport development area, and no government unit shall issue a permit for the use, construction, alteration or planting of any property, building, structure or tree not in accordance with its general provisions, except for minor footage variances, until the council has approved changes or variances in such control measure pursuant to subdivision 2. After the council has approved a land use and development control measure pursuant to Subdivision 2, no public or private use contrary to its provisions shall be made of the property to which it applies, and no government unit shall issue a permit for the use, construction, alteration, or planting of any property,

building, structure or tree not in accordance with its general provisions; and no special use permit or variance may be granted which authorizes a use or development which is contrary to the council's criteria and guidelines.

Subd. 4. CONTROL MEASURE REVIEW BEFORE SITE SELECTION. After the commission has called a hearing for the selection of a site for a new major airport in the metropolitan area pursuant to Minnesota Statutes, Section 360.124, and until the commission has determined not to use the site described in the notice of hearing for a new major airport, the governing body of each government unit in the metropolitan area shall submit to the council for review and comment in accordance with and submit to the provisions of Minnesota Statutes, Section 473B.06, Subdivision 7, any land use and development control measure applicable to or proposed for the site described in the notice of hearing or to any property within five miles thereof, and any proposed amendments or variance thereto. During the period described above, no government unit shall construct a public building or facility on the proposed airport site or within five miles thereof until it has submitted its plan therefor to the metropolitan council for review and comment as provided in this subdivision.

Sec. 2. AIRCRAFT NOISE ZONES. Within 120 days after the selection and approval of a site for a new major airport in the metropolitan area, the metropolitan council shall determine the probable levels of noise which will result in various parts of the metropolitan area from the operation of aircraft using the site, shall establish aircraft noise zones based thereon applicable to property affected by such noise, and shall establish acceptable levels of perceived noise decibels for each land use, using the composite noise rating method and tables or the noise exposure forecast method and tables. Each government unit having power to adopt land use and development control measures applicable to property included in any aircraft noise zone, shall adopt or incorporate in existing land use and development control measures the applicable acceptable level of perceived noise decibels established by the council, and shall adopt such other control measures as may be necessary to prevent the use, construction or improvement of property and buildings under its jurisdiction so that persons using the property and buildings are subjected to a level of perceived noise decibels in excess of the acceptable level established for that land use. A map showing the aircraft noise zones and a copy of the applicable acceptable levels of perceived noise decibels shall be mailed to the governing body of each government unit having authority to adopt land use and development control measures applicable to property in each aircraft noise zone, to the commission, and to the state commissioner of aeronautics. The control measures adopted by a government unit to comply with this section shall be submitted to and reveiwed, changed and approved by the council, and placed into effect by the government unit, in the manner prescribed in section 1 subdivision 2. The council may make changes in the aircraft

noise zones and the applicable acceptable levels of perceived noise decibels to conform with the actual levels of noise produced by aircraft using the airport site when it is in operation, and may require changes in control measures applicable to airport noise zones to conform with changes made by it. No property shall be used, and no building or other structure shall be constructed or improved, within any aircraft noise zone, so that persons using the property and buildings are subjected to a level of perceived noise decibels in excess of the acceptable level established by the council for that land use.

Sec. 3. CONTROL MEASURE INVOLVING TAKING; CONDEMNATION BY COMMISSION. Subdivision 1. If either the provisions or the application of section 1, subdivision 2, or any land use and development control measure applicable to public or private property in an airport development area is determined by a court of competent jurisdiction to constitute a taking, the commission in the exercise of its power to acquire lands for the airport shall have the power to acquire the property or any similar property or to acquire an interest therein to the extent needed for the application of such measure, by eminent domain exercised in accordance with Minnesota Statutes, Chapter 117. The right to eminent domain shall be exercised if the commission has or will have funds to pay the condemnation award and the council determines that it is necessary to protect the airport from encroachment or hazards, or to protect residents in the area, or to encourage the most appropriate use of property in the airport development area, or to protect and conserve the natural resources of the metropolitan area.

Subd. 2. The commission may retain any property now owned by it or acquired pursuant to subdivision 1 and use it for a lawful purpose, or it may provide for the sale or other disposition of the property in accordance with a redevelopment plan in the same manner and upon the same terms as the housing and redevelopment authority and governing body of a municipality under the provisions of Minnesota Statutes, Section 462.525, all subject to the provisions of section 1, subdivision 2, or existing land use and development control measures approved by the council.

Subd 3. The commission and any other government unit in the metropolitan area may enter into an agreement whereby the cost of acquiring any property and the proceeds from the sale or other disposition thereof pursuant to subdivision 2 are to be shared by the commission and such government unit. The commission, the metropolitan council, or any government unit may also enter may also enter into any agreements with the United States or the state of Minnesota, or any agency or subdivision thereof, and do all acts and things required by state or federal law or regulations as a condition or consideration, for the loan or grant of funds or property for the purpose of land acquisition or improvement pursuant to subdivisions 1 and 2.

Sec. 4. RELATION TO AIRPORT HAZARD ZONING. Sections 1 and 2 and any criteria, guidelines or land use and development control measure approved by the council pursuant thereto shall in no way supersede or limit the powers conferred on a municipality to do airport hazard zoning or the commissioner of aeronautics by Minnesota Statues, Sections 360.061 to 360.073, and shall be consistent with any exercise of such power by the commissioner.

Sec. 5. GOVERNMENT UNITS IN AIRPORT DEVELOPMENT AREA; TAX SHARING. The legislature determines that the location of a new major airport in the metropolitan area will increase the value and rate of development of land in the airport development area; that the airport development area may comprise property located in several government units; that the exercise of the powers and duties conferred on government units by sections 1 to 3 to control development of land in an airport development area may result in greater development of such land within one government unit than another; that the control of such development will be of benefit to the entire airport development area; and that the assessed value of taxable property and the tax resources in the government unit where the most development takes place may be significantly greater than in other government units in the area. Therefore, to encourage the protection of inhabitants of the area and natural resources of the metropolitan area, to increase the likelihood of orderly development in an airport development area, and to provide a way for all government units in the area to share in the tax resources generated by growth of the area, the governing bodies of all government units located wholly or partly in an airport development area shall jointly study and decide upon a plan for the sharing of property tax revenues derived from property located in an airport development area. If 80 percent of the government units having territory within the airport development area agree upon a plan, such plan shall be put into effect and all government units shall enter into such agreements as may be necessary for this purpose, provided that the plan shall not impair the existing contract obligations of any government units. This section shall not apply to the commission or the council.

Sec. 6. DEFINITIONS. Subdivions 1. For the purposes of this act the terms defined in this section have the meanings given them.

Subd. 2. "Commission" means the Minneapolis-Saint Paul metropolitan airports commission.

Subd. 3. "Government unit" means any county, city, village, borough, town, council, commission or school district.

Subd. 4. "Metropolitan area" means the area of the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington.

Sec. 7. Notwithstanding any provisions of Minnesota Statutes, Section 360.101 to 360.144, or any other law to the contrary, the commission may select a site and exercise the powers, control and jurisdiction granted it by law at any place or over any other airport within 35 miles of the city hall of either city as defined in Minnesota Statutes, Section 360.102, Subdivision 9.

Sec. 8. SEVERABILITY CLAUSE. If any court determines that any provision of this act or any application thereof to any facts is invalid for any reason, such invalidity shall not affect any other provision or application of provisions of this act, each of which is declared to be severable.

Attachment B

Intro

STATE OF NEW YORK

3353

1971-1972 Regular Sessions

IN ASSEMBLY

January 28, 1971

Introduced by Mr. H. A. POSNER—Multi-Sponsored by—Mr. HARDT—read once and referred to the Committee on Local Governments

AN ACT

To amend the general municipal law and the transportation law, in relation to the powers of municipalities near public airports and the New York department of transportation with respect to measures to protect the approaches to public airports and to develop land usage compatible with airport operations, and in relation to the powers of municipalities owning airports to acquire real property for airport purposes within areas near their airports

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three hundred fifty-five of the general municipal law is hereby renumbered section three hundred fifty-six-a.

§ 2. Such law is hereby amended by inserting therein a new section, to be section three hundred fifty-five, to read as follows:

§ *355. Definitions. For the purposes of section three hundred fifty-six and three hundred fifty-six-a of this article, unless the*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

context otherwise requires, the following terms shall be understood as defined below:

1. "Aircraft" shall mean any device now known, or subsequently invented or designed, used for navigation of or flight in the air;

2. "Airport" shall mean any area of land or water, or any structure, open to the public, used or intended for use for the arrival and departure of aircraft, including any areas used or to be used for passenger and cargo terminals, aircraft repair and storage, and other functions necessary or reasonable for the direct support of aircraft operations, including all buildings and facilities located in such areas;

3. "Airport hazard" shall mean any structure, or natural object, including trees, located on or in the vicinity of an airport, that obstructs the air space required for aircraft arriving or departing such airport, or is otherwise hazardous to the flight of such aircraft. Unless no applicable general or specific guidelines with respect to obstructions have been issued by the Federal Aviation Administration and are in force, the standards of that agency shall be determinative in the matter of defining such obstructions;

4. "Airport hazard area" shall mean the area of land or water surrounding an airport on which one or more airport hazards exist or might be established if not prevented as provided in sections three hundred fifty-six and three hundred fifty-six-a of this article;

5. "Incompatible land use" shall mean any use of land or water around an airport, other than such use as would amount to an air-

part hazard, that, considering the nature of aircraft operations at such airport, the best use of areas around such airport, and the probable future change in both of the above factors, appears to be inconsistent with the long-term best interests of residents of the area around such airport, the airport, or the public at large;

6. "Incompatible land use area" shall mean any area of land or water that is devoted to an incompatible land use, or that might be so devoted if not regulated or developed in the manner provided in sections three hundred fifty-six and three hundred fifty-six-a of this article;

7. "Municipality" shall mean any city, village, town, county or other political subdivision that now has, or hereafter acquires, authority to enact zoning regulations based on the state's right to promote the health, safety, morals or general welfare to designate permitted land uses, or the nature of particular improvements, with respect to any area within the state;

8. "Person" shall mean any individual, firm, copartnership, corporation, company, association, joint stock association, governmental unit, or other entity, including any trustee, receiver, assignee or other representative;

9. "Structure" shall mean any object constructed or installed by man, including, without limitation thereto, buildings, towers, smoke-stacks and overhead electrical transmission lines.

§ 3. Section three hundred fifty-six of such law, as amended by chapter eight hundred thirty-seven of the laws of nineteen hundred forty-seven, subdivision five thereof having been last

amended by chapter three hundred ten of the laws of nineteen hundred sixty-two, is hereby amended to read as follows:

§ 356. Protection of approaches to [public airport] *airports*. 1. It is hereby declared that [a flight] *an airport* hazard within [the flight] *an airport* hazard area [as defined in section three hundred fifty-five of this chapter] endangers the lives and property of *both the* users of [the] *an* airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the public utility of the airport and the public investment therein. *It is further declared that an incompatible land use may interfere with the general welfare of owners and occupants of land in the vicinity of an airport, including those owners and occupants putting such land to such an incompatible use, and that such incompatible land uses do interfere with the general welfare of the community at large, in that they are adverse to the orderly and economically efficient development of airports and the areas around them, thus tending to destroy or impair the utility of such airports, and the public investment in them, and to prevent the most advantageous development of the areas around such airports. Thus, it is found that the existence of airport hazards and incompatible land uses are inconsistent with the stated policy of the state of New York that adequate, safe and efficient transportation facilities and services at reasonable cost to the people are essential to the economic growth of the state and the well-being of its people, and are therefore to be encouraged. It is also found that, under federal laws relating to grants-in-aid for air-*

port development, it is incumbent on interested local officials to be able to give reasonable assurances that the usefulness of airports so aided will not be destroyed by the unreasonable existence of incompatible land uses. Accordingly, it is hereby declared as a matter of public policy: (a) that the creation or establishment of [a flight] *an airport* hazard [within such flight hazard area] *or an incompatible land use* is a public nuisance and an injury to the people and community served by such [public] airport; (b) that it is, therefore, necessary in the interest of the public safety, public health and general public welfare[,] that the creation or establishment of such [flight] *airport* hazards *and incompatible land uses* be prevented; *and* (c) that this *should* be accomplished to the extent legally possible under the constitution of the state by exercise of the police power, without compensation, by the [municipalities affected thereby under the authority granted in the following subdivisions;] *means outlined in the remaining subdivisions of this section.* [(d)] *It is further declared* that where the application of regulations promulgated under [such] *the* police power in any particular case would prove so unreasonable as in fact to constitute a taking of the property affected, [there is provided in section three hundred fifty-five of this chapter authority for the expenditure by municipalities of public funds for the acquisition of the fee or such lesser interest in property as may be necessary and proper to abate such particular hazard or prevent the creation of such hazard within the flight hazard area] *any municipality, under the authority and according to the procedures set out by section three hundred fifty-six-a of this article, may raise and*

expend such public funds as are necessary to acquire any land, or lesser property interest therein, the acquisition of which may be necessary to prevent or abate the creation or continuation of an airport hazard or incompatible land use.

2. Any [city, village or town] *municipality, having determined that it has* within its territorial limits any part of [a flight] *an airport* hazard area [as defined in section three hundred fifty-five of this chapter] *or an incompatible land use area*, is hereby empowered by action of its governing body after due notice and hearing to adopt, amend and enforce regulations applicable within municipal limits for the protection of persons and property within such [flight] *airport* hazard area, *for the safety of air transportation users, and for the prevention or abatement of incompatible land uses. In determining whether airport hazards or incompatible land uses exist within its territorial limits such municipalities shall, as to airport hazards, consult all applicable standards of the Federal Aviation Administration, and, as to incompatible land uses, seek the advice and cooperation of the New York department of transportation, as provided for in subdivision nine of section fourteen of the transportation law.* Such regulations may divide such [flight] *airport* hazard [area] *areas and such incompatible land use areas* into different districts, and within each such district may apply *reasonable* regulations, which may differ as between different districts, and may differ *within districts* according to angles of elevation and distances computed from the ends of the [runway] *runways* of [such] *the* airport *in point* and [from] *according to* the boundaries of *aircraft* approach and [turning]

departure zones as may be required, but *which* otherwise shall be uniform [within] *as between and within* districts of the same classification. Such regulations may restrict and limit the height to which [buildings or] structures may be erected, *or at which they are permitted to continue to exist,* or trees or other natural objects *are* permitted to [exist or] grow, *or at which they are permitted to continue to exist,* in such [flight] *airport* hazard [area] *areas* [and shall conform so far as locally practicable to such standards as may be promulgated and approved by the Federal Civil Aeronautics Administration or its successor]*; such regulations may also specify the land uses permitted within such incompatible land use areas, and may include alternative or conditional specifications as to permitted land uses that, for instance, condition allowance of otherwise prohibited land uses on the design of, and quality of materials used in, structures constructed to carry on such alternative or conditional land uses.*

3. All regulations adopted under this section shall be reasonable and none shall impose any requirement or restriction that is not reasonably necessary to effectuate the purposes of this section. In determining what regulations to adopt each municipality shall consider, among other things, the nature of the terrain within any airport hazard area, the value of the airport in point to the municipality and to the entire area served by the airport, the character of the operations expected to be conducted at the airport in the future, the various uses to which the land in any incompatible land use area is and will be best suited, and the best means to minimize the disturbances affecting people and property

within its boundaries while maximizing the economic value of land within incompatible land use areas. Regulations adopted under this section, if the necessity is indicated by the above considerations, may require the removal, lowering, extinguishment or other change or alteration of any structure or natural object not conforming to the regulations when adopted, provided that such regulations contain reasonable standards for the amortization of such pre-existing structures and natural objects, and further provided that no removal of any such pre-existing structure or natural object shall be required within five years of the adoption of such regulations. Whenever the governing body of any municipality enacting regulations under this section, or any administrative body set up by such municipality to aid in the enforcement of such regulations, determines that a pre-existing nonconforming structure, natural object or use has been abandoned, or more than eighty percent torn down, destroyed, or deteriorated, such municipality or agency may compel the owner of the nonconforming structure or object, at his own expense, to lower, remove, extinguish, reconstruct, or equip such structure, natural object or use as may be necessary to conform with such regulations. If the owner of property to whom such an order is directed neglects or refuses to comply with such order for thirty days after notice thereof, the municipality or agency may proceed by any means necessary to have its order carried out, assessing the cost of such action against the nonconforming structure or natural object, or, to the extent the land is owned by the same owner, against the land on which such structure or natural object was located. Any person desiring

to use his property, or to continue its use, in violation of regulations adopted under this section may apply to the appropriate municipality or administrative agency for a variance from the regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this section; provided, that any variance may be allowed subject to any reasonable conditions that may be deemed necessary to effectuate the purposes of this section.

[3.] *4.* Where [a public airport or any part of its flight] *any airport* hazard [area] *areas or any incompatible land use areas near an airport* [lies] *appear to lie* in [one] *two* or more municipalities, upon the request of the municipality owning such airport, any municipality [affected thereby and] empowered *to enact regulations* as described above may by resolution duly adopted join with [the municipality owning such airport] *such other similar municipalities* in the establishment of a joint airport zoning board. Such board, *which shall be organized in the manner agreed to by all participating municipalities,* shall prepare appropriate regulations, *in the manner and of the sort authorized by subdivision two of this section,* for [such flight] *all airport* hazard [area] *areas and incompatible land use areas* [of the character authorized in subdivision two of this section and in accordance so far as locally practical with such standards promulgated and approved by the Federal Civil

Aeronautics Administration or its successor] *in the participating municipalities*, and shall recommend the adoption in any municipality [wherein any part of such flight hazard area is located] of such regulations as may be applicable within [their] *its* respective municipal limits. The cost of [preparing, enacting, publishing and amending such regulations as may be adopted by a municipality in accordance with the recommendations of] *operating* such joint board shall [be charged to the requesting municipality owning such airport or may] be shared by the participating municipalities in such [other] manner as may be recommended by such joint board and mutually agreed to by each municipality [affected thereby] *participating therein*. Each municipality joining in the creation of such joint board is hereby authorized to appropriate [moneys] *funds* for its agreed upon share of the reasonable cost [of preparing, enacting, publishing and amending such regulations] *thereof. If: (a) any municipality authorized under this subsection to participate in a joint airport zoning board refuses to do so within one hundred eighty days after being requested to participate by another such municipality, or by the owner or operator of the airport in question, (b) any municipality actually participating in such joint airport zoning board declines to enact regulations reasonably similar to the regulations recommended by such joint airport zoning board, (c) the regulations actually adopted by a municipality under this section, whether or not reasonably similar to the recommendations of any such joint airport zoning board, appear to the owner or operator of the airport in question to be inadequate, or (d) the regulations actually adopted*

by a municipality under this section, for any reason, appear to the state commissioner of transportation to be inadequate, then, the state department of transportation, after due notice and an adequate hearing, shall adopt, and is hereby empowered to adopt, regulations of the sort outlined in subsection two hereof, to the extent necessary, for each such municipality. All such regulations adopted for a municipality by the department of transportation shall be filed with the municipality involved and shall thereafter take precedence over any conflicting regulations previously or subsequently enacted by or for such municipality, except that each such municipality may thereafter amend regulations adopted for it by the department of transportation after obtaining the written assent of the commissioner of transportation to each such amendment. All regulations so adopted for a municipality by the department of transportation shall thereafter be treated as if they were enacted by the municipality itself, and shall be administered and enforced by each such municipality.

[4.] *5.* In the event that a municipality has adopted, or hereafter adopts, a comprehensive zoning ordinance as heretofore or hereafter authorized by law, the provisions of this [article] *section* governing the protection of [public] *approaches to* airports [and flight hazard areas] may be deemed to be supplementary to such general grant of power and any [flight] *airport* hazard area *or incompatible land use area* regulations applicable to any part of the area of such municipality may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced [in connection therewith by the municipality within which the

regulations in question are applicable] *in accordance with the provisions of such comprehensive zoning regulations for administration and enforcement; provided, however, that in the event of conflict between any regulations adopted under this section and any other regulations applicable to the same area, the former shall govern and prevail.*

[5.] *6.* Any person aggrieved by any order or decision of *a municipality or* an administrative official *or agency* charged with the enforcement of regulations adopted pursuant to this section, *including specifically an owner or operator of an airport convinced that the order or decision inadequately protects such airport,* may appeal such order or decision within the time and in the manner provided in the local zoning ordinance of that municipality or otherwise provided by law, or in the absence of a zoning ordinance, or if no board of appeals or other appellate body has been established under such local zoning ordinance, may appeal such order or decision to the governing board of that municipality. Any such appeal to a governing board of a [city, town or village] *municipality* shall be taken within sixty days after the filing of such order or decision with the clerk of that municipality[:], and shall be perfected, conducted and determined in accordance with the respective provisions of the general city law, town law or village law applicable generally to appeals from decisions relating to zoning regulations, to the extent that such provisions can be reasonably adapted to the proceedings of such governing board. Any decision of such board of appeal, other appellate body, or governing board of a [city, town or village] *municipality* shall be subject to review

by a proceeding under article seventy-eight of the civil practice law and rules in accordance with the respective provisions of the general city law, town law or village law applicable generally to the judicial review of decisions relating to zoning regulations; *provided, however, that the state department of transportation, either on its own motion or pursuant to an appeal, may within thirty days of any such decision by an administrative official or agency, a board of appeal, other appellate body, or governing board of a municipality decide to review such decision. No article seventy-eight proceeding such as outlined above shall be authorized until the time within which the department of transportation may decide to review such a decision has passed or, if such initial or further review is decided upon by the department of transportation, until such time as it has reached a decision. In the latter case the article seventy-eight proceeding shall review the decision of the department of transportation.*

7. Each municipality adopting regulations under this section shall, within thirty days thereafter, file with the state department of transportation a complete text of all regulations, and amendments thereto, enacted under this section, including amendments to any regulations previously enacted for such municipality by the department of transportation, and shall, within ten days thereafter, file with the state department of transportation copies of all orders and decisions made by such municipality under subdivision six of this section with respect to such regulations.

§ 4. Section three hundred fifty-six-a of such law, as last amended by chapter eight hundred thirty-seven of the laws of nineteen hun-

dred forty-seven and thus renumbered herein, is hereby amended to read as follows:

§ 356-a. Acquisition of rights and property surrounding airports. Any county, city, village or town which [has established and] *owns or* is operating, or [will] hereafter [establish and operate] *owns or operates*, an airport, [landing field or seaplane harbor] *and any municipality authorized to regulate airport hazards and incompatible land uses under section three hundred fifty-six of this article*, is hereby authorized to condemn, or acquire by purchase or gift, *any land, or lesser property interest therein, the acquisition of which is necessary to prevent or abate the creation or continuation of an airport hazard or an incompatible land use, provided that no such municipality, unless it also owns or operates the airport in question, shall be authorized to condemn or otherwise acquire any such land or lesser interest therein for the above-described purpose outside its own territorial limits, and provided further that, where any county, city, village or town owning or operating an airport begins a condemnation proceeding permitted by this section with respect to property outside its own territorial limits, it shall give the municipality within which the property is located notice of such proceeding, after which, at any time within thirty days of such notice, it shall be the absolute right of such other municipality to itself proceed under this section in the place of such airport owner or operator. Without in any way limiting the foregoing, it is specifically declared that the above-described right to condemn or otherwise acquire land or other property rights shall extend to* the right to abate or

remove any [flight] *airport* hazard, [including any structure, building, tower, pole, wire, tree or other thing, or portion thereof, located within the flight hazard area being the approach and turning zones which lie within three thousand feet of such airport, landing field or seaplane harbor or within such greater distance as the Federal Civil Aeronautics Administration or its successor may declare to be necessary with respect to any particular airport, landing field or seaplane harbor for the approach and turning zones appurtenant thereto, and which the governing body of such county, city, village or town shall determine to constitute a menace to the safety of aircraft using such airport, landing field or seaplane harbor, or to the safety of persons and property within the flight hazard area above defined, including the right of ingress to and egress from the place upon which such structure, building, tower, pole, wire, tree or other thing exists, for the purpose of such abatement or removal. Any such county, city, village or town is further authorized to condemn or acquire by purchase or gift,] the right to unobstructed use of such portion of the air space [within three thousand feet of such airport, landing field or seaplane harbor or within such greater distance] as may be [certified to be] necessary [in the manner heretofore provided in this section so that nothing will interfere with] *for* the ascent or the descent of any aircraft [at a gliding angle of one foot in height to every thirty feet of horizontal distance from the nearest point of such airport, landing field or seaplane harbor or at such other angles as may be declared by the Federal Civil

Aeronautics Administration, or its successor, as necessary for the approach and turning zones with respect to any particular airport, landing field or seaplane harbor. Any such county, city, village or town is further authorized to condemn, or acquire by purchase or gift, for a term of years or perpetually], *and* the right to place and maintain[,] obstruction markers and/or lights upon any structure, [building, tower, pole, wire,] tree, or other thing [located within three thousand feet of such airport, landing field or seaplane harbor or within such greater distance] as may be [certified to be] necessary *in order to avoid an airport hazard*, [in the manner heretofore provided in this section, which the governing body of such county, city, village or town shall determine to constitute a menace to aerial navigation to or from said airport, landing field or seaplane harbor,] including the right to lay and maintain conduits and wires to such obstruction markers and/or lights. Any [such] property or property right [in any structure, land, building, tower, pole, wire, tree or other thing or portion thereof] *that may be condemned or otherwise acquired by virtue of this section* shall be acquired by purchase, if the [county, city, village or town] *airport owner or operator or other municipality* is able to agree with the owners on the terms thereof, and otherwise any such property or property right [in any structure, land, building, tower, pole, wire, tree or other thing or portion thereof] may be taken by condemnation, in the manner provided by the law under which such county, city, village or town is authorized to acquire property for public purposes, or if there

be no such law, in the manner provided for and subject to the provisions of the condemnation law. *Once obtained, any property or lesser property right acquired under authority of this section may be used for any public purpose consistent with the purposes of section three hundred fifty-six of this article and with any applicable regulations enacted thereunder, including specifically, the development of commercial or industrial areas or sites to be leased or sold to private persons, or the expansion of the airport in point. Provided, however, that the condemnation value of the property shall be the commercial or industrial value and not the residential value.*

§ 5. Subdivision nine of section fourteen of the transportation law, as added by chapter four hundred twenty of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

9. To advise and cooperate with municipal, county, regional and other local agencies and officials within the state to plan and otherwise coordinate the development of a system of air routes, airports and landing fields within the state and to protect their approaches. *In connection with such powers and duties the department is hereby specifically empowered, under the conditions specified in section three hundred fifty-six of the general municipal law, to adopt regulations for airport hazard areas and incompatible land use areas (as defined in such section) around airports, to review decisions and orders of municipalities with respect to the regulations for airport hazard areas and incompatible land use*

areas authorized by section three hundred fifty-six of the general municipal law, and to appear as a party or as a friend of the court in any judicial proceedings concerning such regulations.

§ 6. This act shall take effect January first, nineteen hundred seventy-two.

Council of State Governments

Preliminary Proposed Findings and Recommendations
for Task Group I, Legal/Institutional Analysis
of the Aircraft/Airport Noise Study Task Force

The following preliminary findings and recommendations are respectfully submitted for the consideration of Task Group I of the Aircraft/Airport Noise Study Task Force. Preceding each recommendation or set of recommendations is a general finding which suggests the reasons for the proposed recommendations and the purpose of the proposed actions. Several recommendations are stated in the alternative, and propose what the Council believes are equally valid solutions to the problems posed in the findings.

The attached findings and recommendations are currently being circulated among concerned states for review and comment, and final recommendations reflecting their further comments will be forwarded to the Task Group prior to the final Task Force meeting.

Finding

The most cost-effective approach to aircraft noise abatement consists of (1) implementing noise reduction technology at the source as fast as possible coupled with (2) operational limitations or procedures to reduce noise and (3) land use control and incompatible use conversion or protection. A national program of cooperative regulatory

and planning efforts by federal, state and local governments and airport proprietors must be developed and implemented. The goal of such a program should be to eventually eliminate incompatible land uses from areas of severe noise impact--that is, from areas subject to noise levels considered adverse to public health and welfare.

Adequate control of noise around airports, and future reduction of noise to reasonable levels, requires expeditious implementation of aircraft and engine design modifications (retrofit) and continued incentives to technology development and design improvements. Regulations regarding retrofit and future aircraft design, e.g., those which are intended to be implemented by the manufacturer or operator via physical modification of the aircraft must be imposed on a national, uniform basis.

In the past, responsibility for adopting and implementing such regulations under § 611 of the Federal Aviation Act has been assigned to the FAA. FAA's promulgation of such regulations has neither been expeditious, nor effective. If adequate regulations are to be adopted pursuant to the 1972 Noise Control Act Amendments to § 611, provision must be made for adequate input to FAA regarding both the noise level restraints necessary to protect public health and welfare and the technical practicality and economic reasonableness of various proposals. In these regards, EPA and NASA have

important expertise and information which must be included in the regulatory decision-making. Such inputs should be formalized and guaranteed by § 611.

Further, the present federal regulatory structure lacks sufficient, continuing mechanisms for interagency coordination of regulatory actions affecting aircraft noise. All concerned agencies, FAA, DOT, HUD, EPA, HEW, and DOD, should be involved in developing a coordinated national aircraft noise abatement program, if necessary perspectives, ideas, expertise and information are to be brought to bear on the problem.

Recommendations:

Adoption of Fleet Noise and Design Regulations

1. The Federal Aviation Administration should continue to be responsible as the lead agency for development and implementation of design and retrofit regulations.

2. An Interagency Aircraft Noise Task Force (IANTF) should be established, composed of representatives of DOT, FAA, DOD, EPA, HUD and HEW, and assigned the specific functions of (1) developing an on going national program for aircraft/airport noise abatement and (2) advising the FAA and DOT on what regulatory actions are most appropriate to carry out that program. IANTF's charge should be to continue, on a regularized basis, the development and review process initiated in the current EPA study pursuant to 37(a) of the 1972 Noise Control Act. IANTF should be a subcommittee of a more general interagency noise control panel, formed under §4 of the Noise Control Act, to coordinate the research and regulatory actions of concerned federal agencies in all fields of noise control and abatement.

3. Actual regulatory authority--formal adoption powers for such rules--should be transferred to the Secretary of the Department of Transportation, in order to be consistent with the purposes of the Department of Transportation Act and assure such rules are consistent with overall transportation and environmental policies. The Secretary of DOT should adopt such rules upon the recommendation of the FAA and IANTF, taking into consideration the comments of other concerned federal agencies, the states and local governments, citizens, airport operators, manufacturers, carriers, et cetera.

4. The National Aeronautics and Space Administration should continue to coordinate and conduct research efforts into developing new aircraft noise control and abatement technology.

5. Section 611 should be amended to place upon NASA the responsibility--analogous to that now conferred upon EPA--formally to determine and report to FAA whenever NASA finds a particular noise control strategy or abatement technology is safe, effective and technologically practicable. NASA should similarly be required to report its findings of the cost of implementing such strategies. Following receipt of such reports and certifications from NASA and EPA, the FAA in consultation with IANTF, should be responsible for (i) determining whether the strategy is

economically reasonable, consistent with safety considerations, and capable of furthering the purposes of § 611--e.g., the effective reduction of noise; (ii) drafting and recommending appropriate regulations to the Secretary of DOT and (iii) implementing such regulations once adopted.

5. Regulations for retrofitting of older aircraft or noise limits affecting new aircraft design should contain step reductions, announced in advance, for various target dates in the future, in order to allow manufacturers and carriers to plan, design, and develop necessary technology for a phased reduction of aircraft noise at the source.

6. In order to allow maximum choice by air carriers as to the abatement techniques used to meet source standards, including various engine retrofit options, aircraft retirement and engine replacement, a Fleet Noise Limit, rather than a specific Retrofit rule, should be adopted. Such a rule should apply to the entire fleet of each American air carrier, and that portion of foreign owned fleets which operates into or out of United States airports.

7. The FAA should immediately adopt air worthiness certificate noise regulations for all previously type certified aircraft still in production, to require that new editions of such aircraft types include all available noise abatement technology. For example, further sales of 727-200 and 737-300 aircraft without noise abatement packages should be immediately prohibited.

Finding B. The noise footprint of the airport can be substantially reduced through such strategics as retrofitting, refanning, and better aircraft design. See Finding A, supra. At a certain point, however, aircraft design modification to reduce noise becomes cost-ineffective. On the other hand, the core area of severely noise-impacted land as constricted by implementation of source abatement technology may be amenable to further reduction via operational regulations at the airport level--e.g., designation of approach and takeoff paths and procedures, noise limits on aircraft using the airport, restriction on the number or time of flight (including total curfews and selective partial curfews). Furthermore, where the noise footprint has been reduced via retrofit and other source abatement strategies, land use control and conversion strategics are much less expensive and may become feasible where they otherwise might have entailed prohibitive acquisition and dislocation costs. The selection of what strategy or strategies to implement at the airport, in order to eliminate incompatable land uses from noise impacted areas, is best made at the local level, and could be most easily coordinated by the airport operator.

In order to assure such decisions are made and implemented pursuant to a national aircraft/airport noise program, federal regulations must be adopted to (1) set standards for airport noise exposure and (2) require development of an airport implementation plan to eventually separate incompatable uses from noise exposure levels found adverse to public health and welfare.

Recommendations: Airport Certification Standards

The FAA should adopt an airport certification noise regulation, requiring the airport proprietor in consultation with concerned state and federal agencies, aircraft operators, pilots, local communities and other interested parties, to develop and implement a noise impact abatement plan to reduce noise in sensitive land use areas to levels deemed acceptable for health and welfare purposes.

a. The regulation should mandate a phased reduction of noise in incompatable land use areas and evential complete separation of incompatable land uses within areas subject to noise based on the levels found adverse to public health and welfare. For the purposes of this rule, the FAA should adopt as a performance standard the noise levels requisite to protect public health and welfare as determined by EPA pursuant to the 1972 Noise Control Act.

b. In developing the implementation plan, the airport operator should consider the following methods for the control or reduction of airport noise:

(1) Encouraging use of the airport by aircraft classes or types with lower noise level characteristics, and discouraging such use by aircraft classes or types with higher noise level characteristics (e.g., by imposing a noise-related landing fee surcharge, or a single event noise limit).

(2) Developing and recommending to FAA approach and departure flight paths and procedures to minimize the noise in residential and other sensitive areas. (See Recommendation 11, infra).

(3) Planning runway alignment and utilization schedules to take into account adjacent noise sensitive land uses, noise characteristics of aircraft and noise sensitive time periods.

(4) Reducing flight frequency through, inter alia, hourly operation limits, encouragement of flight consolidation, imposition of total or categorical curfews.

(5) Relocation or regulation of maintenance activities.

(6) Procedures for ground operations, including turning, taxiing and warmups.

(7) Use of shielding, including natural terrain, buildings, sound baffles, et cetera.

(8) Restrictions on future development of incompatible land uses within actual or predicted noise impact zones, through local, regional or state land use regulation (See Recommendations 13-15, infra), or the purchase or condemnation of no residental use restrictive easements.

(9) Conversion of existing incompatable land uses within the severe noise impact zone (as reduced via retrofitting, fleet noise, and (type certification regulation) to compatible uses. Such conversion might include (i) retrofitting structures with additional insulation (double-panned windows) and

ventilation equipment, (ii) airport purchase or condemnation of incompatible uses for later airport development or private redevelopment, or (iii) encouraging zoning decisions which encourage private market purchase of impacted residential properties and redevelopment to commercial warehouse, or industrial uses.

9. A national consulting staff and service should be established by appropriate federal agencies, under the lead of the FAA, to assist airport proprietors in developing implementation plans. Such service might aid the airport operator and those working with it in the testing of various strategies or combinations and analyzing their probable effect on overall noise reduction. Such a service would provide airports with much needed technical resources while allowing greater freedom for local decision-making based on knowledgeable choices.

10. The FAA in cooperation with NASA and other concerned parties, should establish a set of alternative approach and departure procedures which are technically feasible and safe (e.g., 2 step approach and climbout, full thrust takeoff). Pursuant to its airport implementation plans, the airport operator should select those procedures for each of its runways which are most effective in reducing noise, and such selection should be made a standard operating regulation by FAA. Such regulation should be manditory and enforced against all aircraft using the airport. The regulation, however, should allow, as

a valid defense to an action for noncompliance, proof by the aircraft operator that the operation in question was a direct result of the pilot's exercise of his responsibility for the safety of his passengers, crew, cargo and aircraft or his emergency authority.

Finding C:

Control of major air transport aircraft in flight--including designation of standard routes, approach paths, runway assignments, and flight procedures--must be exercised and coordinated by one agency acting as the "Traffic Controller in the Sky." Only one person can or should direct the pilot at a time. On the other hand, development and adoption of standard routes and approach/takeoff procedures may be a joint venture, allowing local and airport proprietor input and choice in order to best alleviate noise problems.

Regarding approach/takeoff procedures in particular, a single procedure may not be beneficial as a noise control strategy at all airports. For example, a full thrust takeoff may be helpful when few people live immediately adjacent to the airport, while a lower power initial departure will be best when aircraft can implement a sharper climbout over water or areas of nonsensitive land uses a relatively short distance from the airport. An entirely different type of approach and takeoff procedure at each airport, however, would be unnecessarily confusing and burdensome. Thus, some limitation of procedures must be imposed, while allowing local option as to what procedures are most effective in reducing noise.

Recommendations: Adoption of Route/Path and Approach/Takeoff Regulations

11. As part of its noise control implementation plan, (see Recommendation 8, supra) the airport proprietor should study, in conjunction with air carriers, pilots, and airport neighbors, the design and use of various flight paths, including corridor and dispersed approach and departure systems. Following such study, the proprietor should recommend such path or paths be adopted by the FAA as a standard path designation, air traffic rule. Compliance with the paths thus established should be mandatory, unless the aircraft operator can establish as a defense that the operation in question was a direct result of the pilot's exercise of his responsibility for safety or of his emergency authority.

Finding D:

In some areas, complete separation of existing incompatible land uses from adverse noise impacts, as required by the airport noise certification rule, may be impossible because of countervailing social or economic needs. For example, where the elimination of housing near airports would result in dislocating residents in an area with an existing serious housing shortage, that is where relocation is not a viable option, conversion may not be advisable.

Recommendation: Variance Procedure

12. Where severe countervailing social or economic problems make total compliance with the airport certification rule impossible, the airport should be required to adopt a

plan which, as much as possible, complies with the purposes of the regulation. A variance procedure should be contained in the airport certification rule to allow longer periods for phasing out incompatible land uses or reducing noise impacts on such uses, or waiver of certain requirements of the rule, provided the plan guarantees implementation of all feasible strategics available to ameliorate the problem.

Finding E:

At the present time, state and local land use planning and control practices are inadequate to prevent the development of noise sensitive land uses within areas subject to incompatable noise levels. Land use decisions are rarely, if ever, coordinated with airport siting design and operational decisions. Much of the problem rests with the fragmentation of land use and airport operational authority. Often the local government or authority which owns and operates the airport does not have jurisdiction over the land around the airport, which may lie within the boundaries of one or more other municipalities. Similarly the municipalities who have the power to plan land use do not have the power or responsibility to regulate airport operations--and thus, control airport noise impacts.

Recommendation: Coordination of Land Use Controls

13. Land use planning and control in the vicinity of airports must be coordinated with the adoption of other

airport noise control strategics at the airport level (e.g., curfews, runway utilization regulations, and single event noise standards), as well as with airport siting and development decisions. Where local general government jurisdictions have zoning powers over land around the airport, land use planning and zoning decisions should be coordinated with airport opeation decisions by a higher level of government on a state or regional basis.

14. States should be strongly urged to adopt appropriate legislation to provide coordination and supervision of land use planning and zoning around airports. Alternative types of such legislation might:

(a) Establish a state or regional airport environs planning agency, responsible for determining incompatible land use areas and adopting land use regulations to bar development of incompatible uses and encourage growth of and conversion to compatible uses in such areas. Such state regulations would be in addition to local zoning ordinances. To the extent local zoning is found inconsistent with the state impact zone regulations, the state rules would supersede local zoning controls. N.B. This is the approach adopted in the Minnesota airport zoning statute. Analogous legislative structures are found in a few state flood plain management laws.

(b) Require localities around airports to develop and submit airport noise impact zone management plans subject to approval by a state or regional planning or environmental agency. Such legislation should further require that the locality adopt adequate zoning or other controls to implement the plan. Where local governments fail to develop or implement such plans within a designated period, the law should allow the state or regional agency to develop, adopt, and implement a plan in lieu of local action. N.B. This approach is used in several state flood plain management laws, and may be preferable from a policy standpoint. It allows local government a first crack at the problem, and does not impose state intervention unless local planning and zoning fails to adequately address the problem.

Because airport environs land use control is part of the much larger land use planning problem, comprehensive state land use legislation may be the best overall solution, and should be supported in lieu of special single purpose land use controls, such as airport environs as flood plain legislation.

15. Congress should adopt federal legislation to encourage state and/or regional government coordination and oversight of land use decisions involving airport siting and airport environ development. Such legislation might be contained in the provisions of a broader law, such as various proposals for a national land use policy act, covering all land use planning matters.

16. The federal government, through the FAA and EPA, should provide technical assistant to state and local planners regarding airport environs compatable use control. In particular, the FAA should reinstitute the practice of providing state and local planning agencies with Noise Exposure Forecast studies or equivalent noise exposure contour analyses.

Finding F:

States and local governments are in a special position to assess particular needs and sensitivities to aircraft noise levels which may vary from the national norm regarding levels which adversely affect public health and welfare. On the other hand, decisions regarding acceptable noise levels and requisite noise abatement may be ill-conceived and uncoordinated if undertaken by a number of relatively small, local government units each having responsibility for only a part of the airport environs.

The governmental unit allowed to set exposure limits more stringent than the federal levels should be able to adequately balance air transportation needs and health and welfare effects, or for such purposes, the unit should be large enough to include within its constituency both the noise affected residents and the air transportation users of the region.

Recommendation: State and Regional Noise Impact Standards

17. States and regional councils of governments (including governments which have jurisdiction over the area containing the airport and airport affectdd environs) should have the power to identify unacceptable airport noise exposure levels more stringent than those set in the airport certification regulation or identified by EPA (see Recommendation 8, supra), and to require implementation by the airport operator and local governments of noise abatement and land use strategies to comply with those limits.

Finding G:

Two of the most substantial obstacles to expeditious control and abatement of aircraft noise at the source, and protection or relocation of incompatible land uses, are the question of who is to bear the cost and the problem of how the necessary large outlays of capital funds can be financed.

In order to retrofit the existing fleet of first-generation, narrow-body jet aircraft and business jets, air carriers (private and aircraft owners) will be forced to invest sums in the private market, over the relatively short period contemplated for implementing retrofit, will be difficult and possibly unreasible, particularly in view of the airlines recent capital outlays, large debt commitments, and equivocal profit-loss history.

A similar problem exists in financing land use conversion, or improvements to homes and other buildings. Local governments and airport proprietors, with few exceptions, do not have the substantial initial resources to begin such a program.

Solution of the aircraft noise problem should not be delayed for the long period required for airlines and airport operators to accumulate the resources necessary to implement various noise control strategics. It is, thus, extremely important that Congress consider and adopt some federally assisted or funded financing scheme for noise abatement.

The cost of retrofitting, and the increased cost of new aircraft incorporating noise control devices, should be ultimately borne by the air transport consumer, that is, the air passenger and air freight shipper. Such costs should be passed through to the consumer either through increased fares (if the cost is financed privately by the airlines) or through a head-tax, surcharge or impost (if the cost is financed by a government fund).

The cost of land use conversion, including the purchase of land or restrictive easements and improvement of certain structures through increased insulation and mechanical ventilation, should be ultimately borne by all air transportation

beneficiaries, including air passengers, shippers, and ground businesses which benefit from air travel. Such cost could be passed through to such beneficiaries through noise-related landing fees or landing fee imposts, a passenger head tax and freight tax, increased lease rentals to airport concessions, increased airport parking fees, or airport assessment district property taxes.

Recommendation: Funding of Retrofit, Residential Insulation, and Land Use Conversion

18. Congress should adopt legislation establishing a financing scheme to allow implementation of presently available source noise abatement technology as soon as possible and assist in conversion of incompatible land uses located within areas which are predicted to remain severely impacted after all feasible operational and aircraft source abatement techniques have been implemented. Such legislation could take the following forms:

a. To finance retrofit:

(1) The Federal Government should establish a noise abatement trust fund, repaid by a head tax or surcharge on the present air transport excise taxes, from which airlines would receive grants to install noise abatement equipment.

(2) The Federal Government could set up a loan fund to assist airlines in the installation of noise abatement equipment, to be repaid by the airlines through higher fares or a noise abatement surcharge on air travel tickets and freight shipments.

(3) The Federal Government could guarantee loans made to airlines by private lenders for the purpose of purchasing and installing noise abatement equipment.

For ease of administration, the most feasible funding source would be a passenger head tax and freight surcharge, collected on every ticket and shipment. In order to most expeditiously implement available retrofitting technology, Congress should appropriate initial "seed money" to the trust fund. Without such appropriation, it is possible an adequate retrofitting program could not be financed until the aircraft affected were too old to make such an additional investment reasonable.

b. To finance land-use conversion, structural insulation improvements, and the purchase or condemnation of facilities and/or restrictive easements to control future incompatible land use development, pursuant to an airport noise abatement implementation plan (see Recommendation 8, supra), Congress should establish and initially fund an airport noise abatement fund, against which an airport proprietor could borrow the sums needed to convert or insulate existing incompatible land uses and acquire such interests. Such sums should be repaid by the airport operator over time through funds received from increased landing fees, a landing fee impost, a passenger head tax, increased concession rentals, or general or special tax revenues.

Because landing fees are often established in long-term leases, and may be otherwise unavailable for prepaying such land use conversion loans, Congress should consider authorizing airports so desiring to impose a landing fee impost (a dollars-for-decibels landing fee surcharge) to finance repayment of monies borrowed from the fund. Furthermore, Congress should clearly authorize airport operators to impose an air travel head and freight tax, if they so choose, for the purpose of financing land use conversion.

Finding H:

The present system for the compensation of property taking, personal and nuisance damages resulting from aircraft noise is irrational, inequitable, and too costly to administer compared to the benefits resulting therefrom.

The "overflight" test of compensability developed by the federal and some state courts is an unjust legal fiction. Damage or substantial taking of property use by noise should be compensable regardless of whether the flight path falls across the property in question. Drastic variance of compensability tests applied from state to state makes little sense, and some uniformity should be encouraged both as to the test of compensable damage or taking and the measure of such damage.

The present compensation system does not assist in solving the airport noise problem. Lump sum payments for "permanent" property devaluation do not provide incentives to the air transport industry to implement noise abatement technology, and, thus, terminate their liability. Such lump sum payments become a permanent license to pollute, and are inimical to a national program of noise abatement.

Furthermore, payment for property value diminution does not guarantee either use of such funds to soundproof the impacted structures or conversion to compatible land uses. Although the latter solutions to the airport noise problem are not always viable, they should be encouraged to the maximum extent possible by the compensation system. (State and federal) Constitutional requirements for just compensation cannot be changed legislatively. However, a legislative scheme of compensation can be devised to supplement such constitutional mandates, in order to provide alternative measures of compensation--including payment for soundproofing and relocation. Such a legislative scheme could also be made more attractive than constitutional damage claim litigation by (1) establishing a clear line of compensability and (2) providing a relatively simple, inexpensive administrative procedure to assert claims and receive payment for soundproofing costs, relocation, or other appropriate relief.

Recommendation: Compensation System

19. Congress and/or the states should adopt legislation to establish an airport compensation system. Such legislation should establish a clear line of compensable damage, based on those levels of noise exposure detrimental to public health and welfare. The law should provide for an administrative procedure whereby noise impacted claimants could apply for and receive funds for either (1) structural modifications--such as insulation and ventilation--to soundproof their residences or other buildings or (2) relocation expenses, including the value of the property which must be abandoned and moving expenses.

The compensation scheme should be coordinated with the airport noise abatement implementation plan, (see Recommendation 8, supra), and financed through airport proprietor loan fund (See Recommendation 18, supra).

Finding I:

Adequate enforcement mechanisms must be established to assure that the national program for aircraft/airport noise abatement and its federal, state and local regulatory components are fully implemented. Some current enforcement mechanisms should be adopted and used for this purpose--for example, enforcement tools under the Federal Aviation Act and Airport and Airway Development Act.

Some regulations, adopted by the federal and state government, may best be monitored and enforced on the local,

or airport operator, level. Thus, federal legislation may be required to authorize airport proprietor, state and local government enforcement of federal standards and sanctions. State legislation may similarly be needed to authorize airport operator and local enforcement of state standards or sanctions.

Recommendations: Enforcement Mechanisms

20. In adopting the Airport Certification Rule, the FAA should provide that any violation of a regulation adopted pursuant to an airport implementation plan approved under the certification rule, is a violation of the appropriate pilot or air worthiness certificate rules. That is, the pilot and air worthiness certificates should be conditioned upon full compliance with the airport rules adopted pursuant to an approved airport implementation plan.

21. Where an airport fails to develop an adequate airport implementation plan, the FAA rule should provide for either (1) federal imposition of such a plan, or (2) partial or total decertification of the airport until such a plan is submitted.

22. Congress should adopt appropriate amendments to the Federal Aviation Act to allow state and local governments and airport operators (1) to institute and prosecute complaints before the FAA for civil penalties as provided under the Act or for suspension or revocation of appropriate Title V certificates, and (3) to adopt local enforcement procedures and penalties for violation of such airport implementation plan rules, standards and procedures.

Finding J:

To the maximum extent possible, aircraft source noise abatement should be accomplished with international cooperation to the extent such regulations affect international fleets. The International Civil Organization (ICAO), however, has appeared reluctant to act in this field, and continued United States leadership is vital. Deference to international cooperation should not be allowed to deprive the federal, state and local governments of their powers to protect their citizens from noise levels adverse to public health and welfare.

Recommendation: International Relations

23. Until adequate international standards are established, all U.S. aircraft noise regulations should apply equally to any aircraft using American airports. No aircraft, regardless of ownership or route, should be exempt from retrofit, fleet noise rules, or type certificate rules.

24. When adequate international standards are established for retrofit, fleet noise or type certification, which are similar to or which have substantially equivalent effect to, U.S. regulations, the United States should waive compliance with its rule to the extent foreign owned aircraft comply with the international standard, provided foreign governments similarly waive compliance with their noise standards for U.S. owned aircraft which comply with an equivalent American regulation.

PRELIMINARY RECOMMENDATIONS
EDF AND SIERRA CLUB
May 21, 1973

RECOMMENDED AGENCY ACTIONS

Our preliminary recommendations begin with a list of agency actions that could, and should, be taken under existing statutory authority:

I. The Federal Aviation Administration

A. Regulation of aircraft noise at the source:

1. Regulations supplementing or amending FAR 36 as follows:

a. Extending the coverage of FAR 36 to SSTs, aircraft under 12,500 pounds, V/STOLS, helicopters, etc.;

b. Requiring that FAR 36 certification be accomplished under actual operating procedures, and that mandated noise levels be met in actual operations;

c. Imposing step reductions over time in permitted noise levels;

d. Providing a "noise floor," as originally proposed in connection with FAR 36, as the goal to be achieved through the above step reductions.

2. Regulations attaching noise conditions to:

a. Air carrier certificates;

b. Aircraft operating certificates.

3. An operating procedures regulation, as proposed by the Boeing Co. and the Aviation Advisory Commission.

4. A retrofit regulation requiring retrofit or retirement of existing aircraft not in compliance with FAR 36

(or any more stringent successor regulations).[1/]

B. Regulation of airport noise

1. A regulation requiring noise certification of proposed and existing airports. If proposed airports fail to meet certification standards, the FAA would, pursuant to this regulation, be required to withhold federal funds and certifications; if existing airports fail to meet certification standards, these airports would be required to file compliance plans as a condition of further operation.[2/] The plans would guarantee compliance by a date established by the FAA. The FAA would prepare a list of approved strategies for obtaining compliance with the standards, from which individual airport operators could choose, including the following:

a. Single event limits;

b. Elimination of certain types of aircraft;

c. Runway and path designations;

d. Local approach and departure regulations (to be selected by the operator from a list certified as safe by the FAA);

e. Structural insulation ("retrofitting" of houses, etc.);

f. Land use conversions.

Ultimate failure to comply would call into play a graduated set of sanctions, including fines, ineligibility for federal funds, and, if lesser measures fail, decertification of the airport.

1/ We have no necessary objection to the use of fleet noise level (FNL) regulations, as such, as a partial means of requiring retrofit or retirement. We do, however, have numerous objections to the particular proposed FNL regulation which the FAA published earlier this year. These objections are fully stated in our submissions to the FAA with respect to this proposed regulation, and have to do with such matters as the proposed exemption for aircraft operated in foreign or overseas commerce or weighing less than 75,000 pounds; and the deletion of the sideline measuring point in calculating noise levels.

2/ For a discussion of the financial aspects of compliance, see the section on Recommended Congressional Actions, below.

2. A regulation,[3/] stating:

a. The degree of community noise exposure which constitutes an "adverse environmental effect" of an airport project under Sec. 16(c)(4) of the AADA, which precludes funding of any project having such an effect unless no feasible and prudent alternative exists, and, if no such alternative exists, unless "all reasonable steps" have been taken to "minimize such effect."

b. What constitutes "all reasonable steps" to purposes of Sec. 16(a)(4) of the AADA.

3. Guidelines for elimination of incompatible land uses around airports, as authorized by Sec. 18(4) of the AADA.

4. Guidelines for airport location and layout, as authorized by Sec. 16(a) of the AADA.

5. A regulation tying eligibility for AADA funds (both for new airports and for improvements to existing ones), and/or federal certifications, to compliance with all applicable guidelines, including those just recommended. See Sec. 18(4) of the AADA, Compare present 14 CFR Secs. 151.26; 151.39.

II. The Civil Aeronautics Board

The CAB should:

1. Prepare and circulate an impact statement, pursuant to Secs. 102(2)(C) and (D) setting forth the environmental consequences of alternative policies for responding to applications from airlines for clearance to negotiate capacity limitation agreements. The statement should cover such alternatives as routine granting of such clearances, and partial deregulation of air fares.

3/ This and the other recommended regulations pertaining to regulation of airport noise should obviously be promulgated in coordination with the basic noise certification regulation just discussed.

2. Use higher load factors in calculating air fares (and/or partially deregulate fares to allow a "zone of reasonableness" within which CAB approval will be given);

3. Establish as CAB policy that it will not approve any IATA Concorde fares that allow Concorde to be subsidized by subsonic jets. (This is pertinent because the Concorde is both economically marginal to the airlines and a substantially greater source of airport noise than new subsonic jets.)

4. Authorize increases in jet fares to fund retrofitting of existing aircraft.

RECOMMENDED CONGRESSIONAL ACTIONS

1. Congress should establish a federal funding mechanism for retrofitting of aircraft and conversion of incompatible land uses around airports. We do not believe, however, that either of these undertakings should be ultimately paid for by the general taxpayer. Rather, the need is for federal assistance in making the large amounts of money required immediately available, subject to ultimate repayment by the industry and the consumer of air transportation, whether by means of head and tonnage taxes, higher landing fees (possibly graduated in terms of noise produced), higher taxes on jet fuel, or some other alternative or continuation of alternatives.

2. Congress should require the National Aeronautics and Space Administration ("NASA") to make a public announcement in the Federal Register each time that agency, through its ongoing research into aircraft technology and operations, determines that a particular noise abatement strategy, if embodied in a statute or regulation, would be (a) safe; (b) effective; and (c) practical, in providing relief from aircraft noise,

and that NASA, in such announcements, shall give its estimate of the cost of implementing such a strategy.

3. Congress should amend Sec. 611 of the Federal Aviation Act to clarify the right of state, regional, and certain local governmental units to set more stringent airport noise standards than any minimum standards set or to be set by the FAA.

John Hellegers

April 27, 1973

TO: Elizabeth Cuadra, Office of Noise Abatement and Control

SUBJ: EPA NOISE STUDY TASK FORCE PROPOSED RECOMMENDATIONS

FROM: Janet Gray Hayes, San Jose City Councilwoman

PROPOSED RECOMMENDATIONS:

I believe the National Standards and Implementing Procedures for noise abatement should follow the State of California's lead. Our State clearly has the reputation of being in the forefront of noise abatement legislation and is presently looked to as one of the leaders in the country in this particular area.

Recommendation #1: Airport certification should be on the basis of noise as well as on the basis of safety factors, for those in the aircraft and for those on the ground exposed to flight patterns.

a. Determination should be made as to what is, and what is not, acceptable noise level in the community for health and welfare of the people.

b. Guidelines and timetables to be set up for conformance and adherence to the noise standards for existing and new airports (as in the California legislation).

c. In California a 65 CNEL noise standard has been mandated by the year 1985 for compatibly zoned residential development. Such standards should be subject to re-evaluation in light of up to date medical findings and research.

d. California has utilized the airport land use commission concept for proper regulation of compatible land uses around the airports.

Recommendation #2: Such legislation as necessary to reassign the responsibility for setting standards for aircraft noise from the FAA to the EPA. The FAA to continue as the responsible enforcement agency to ensure the timely achievement of EPA noise standards and the necessary implementation of the DOT (or NASA) noise control technology.

a. The primary mission of the FAA has clearly been to promote the airline industry.

b. The powers assigned and the Congressional direction given for noise abatement procedures have been assiduously and overtly ignored through the years by the FAA. The documentation is clear and concise in this regard.

c. The Griggs Court Decision of 1962 assigning liability to airport operators (actually those least able to pay) has been a misplacement of the true liability. The operators have attempted regulations to deal with the problems with which they are liable, the FAA has time after time overruled such regulations by "federal pre-emption" claims, but has actually neglected to help the communities deal with the problems of noise.

Recommendation #3: Department of Transportation (DOT) or NASA be directed to develop and certify for ERTP (Economic Reasonableness & Technological Practicality) and safety the necessary noise control technology--with EPA input.

JGH:cw

Janet Gray Hayes, Councilwoman

NATIONAL LEAGUE OF CITIES

UNITED STATES CONFERENCE OF MAYORS

May 4, 1973

MEMORANDUM

TO: Elizabeth Cuadra, Office of Noise Abatement, EPA

FROM: Larry Snowhite

SUBJECT: Recommendations for Chapter1, Aircraft/Airport Noise Report

The following are recommendations based upon the National Municipal Policy of the National League of Cities and the Resolutions adopted by the United States Conference of Mayors. These two organizations jointly represent over 15,000 municipalities throughout the United States.

A. Intergovernmental Responsibilities

1. The Environmental Protection Agency should be responsible for aircraft noise standards, and should be the lead Federal agency for aircraft noise abatement efforts.

2. The Federal government and aircraft operators should accept full responsibility for the payment of damage claims resulting from aircraft pollution. The Federal government should provide assistance for relocation, redevelopment, and soundproofing near airports.

3. The Department of Transportation must develop safe, uniform aircraft operating procedures at airports which minimize noise annoyance to nearby communities. Airport certification should be on the basis of noise as well as on safety factors.

4. The Federal government should support advance acquisition of land or acquisition of land or other property interests in and around airports.

5. The siting and development of airports must be controlled by general purpose local governments and the state. Local decision-making for airport siting and development should be based on federal and state standards and criteria. Land use controls could be delegated to airport operators, special districts, or regional entities, subject to ultimate responsibility and accountability to general purpose local governments.

6. Local governments and airport operators must have authority to impose more stringent or additional requirements on aircraft or airport operations.

1620 Eye Street, N.W., Washington D.C. 20006 / 202-293-7300

B. Source Noise Reduction

1. Emission controls on aircraft must be established by January 1, 1977, including retrofit or retirement of existing aircraft.

2. Engines on existing aircraft should be retrofitted if necessary, to make them at least as quiet as the levels specified in Part 36, Federal Aviation Regulations.

3. The maximum allowable noise levels specified in Part 36, Federal Aviation Regulations must be lowered approximately to 10 EPndß for aircraft certified after January 1, 1980.

4. Any supersonic transport operating to or from U.S. airports must meet maximum noise limits no greater than the levels specified in Part 36 of the Federal Aviation Regulations for subsonic aircraft. Overflights creating sonic booms over populated land areas should be prohibited.

C. Reduction of Noise Through Operation Controls

1. FAA should establish airport/community noise exposure standards accounting not only for the noise level of individual flights, but the cumulative noise from successive flights during the day, and particularly nighttime flights.

2. Flight procedure requirements to reduce noise must be adopted by EPA and FAA, including steep landing approaches, reduced thrust takeoffs, increased load factor on commercial airlines and regulations on flight patterns, number, routing and scheduling.

3. The Federal, state, and local governments must be able to impose curfews on noisy airports.

4. Local governments and airport operators should have the authority to levy differential fees based on aircraft noise, and/or fines for violation of state and local noise standards.

John Tyler
N.O.I.S.E.

RECOMMENDATIONS FOR SECTION 5
OF THE REPORT OF TASK GROUP I
IN THE EPA REPORT TO CONGRESS

The following set of interrelated recommendations have been put together as a package for the development of aircraft noise/land use compatibility:

1. EPA establish cumulative noise exposure standards.

This authority was given to EPA in P.L. 92-574 Sec. 5(a)(1)(2) for all kinds of noise. Aircraft noise should be treated in the same manner as all other noises.

2. NASA establish aircraft noise certification levels.

NASA should establish noise certification levels for new aircraft, retrofit and should establish operating procedures which are economically feasible, technologically practical, and safe (ERTPS). NASA is doing this work now.

3. FAA certify aircraft for noise on basis of NASA recommendations.

Federal legislation is recommended requiring FAA to certify aircraft for noise on the basis of NASA recommendations. NASA not FAA has the expertise in this area (ERTPS). NASA not FAA has objectivity in this area of aircraft noise abatement design, operation and safety.

4. States to control aircraft noise/land use.

The states either directly or through their airport

operators have the authority now to control both airport operations and land use. However, it is recommended that federal legislation be introduced in Congress to require the states through their airports to control aircraft noise exposure (levels and areas) and through their local governments to control land use to achieve aircraft noise/land use compatibility. This is a matter of balancing state air transportation needs against land areas to be zoned for the accompanying aircraft noise exposure.

5. State financing of land use change.

It is recommended that federal legislation be introduced in Congress to permit the airlines to include in their costs of operations any airport charges resulting from expenditures for land use changes to achieve aircraft noise/land use compatibility.

6. FAA to require state implementation plans.

It is recommended that federal legislation be introduced in Congress authorizing the FAA to require, from the states, plans to achieve aircraft noise/land use compatibility. The aircraft noise exposures used in such plans should be based on FAA aircraft design and operation certification noise data. The land use zoning required by such plans should be

based on EPA aircraft noise exposure/land use compatibility standards. The legislation should require the FAA to establish a schedule for states to bring themselves into compliance with their plans. Penalties for failure to meet the schedule should include:

a. fines;

b. withholding of federal funds for airport maintenance and expansion;

c. withdrawal of FAA certifications and services required for airport operation.

Natural Resources Defense Council, Inc.

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May 4, 1973

Ms. Elizabeth Cuadra
Office of Noise Abatement and Control
Environmental Protection Agency
1835 K Street, N.W.
Washington, D.C. 20460

Dear Ms. Cuadra:

Attached are our final recommendations, with a brief discussion of the considerations which led us to make them. You will see that they are substantially an enlargement on our preliminary ones.

We have received useful comments from several members of the Task Group on our section draft. We plan to send you our final version special delivery this week-end.

Sincerely yours,

John E. Bryson

Craig W Johnson

Craig W. Johnson

JEB:gen
Enclosure

RECEIVED
MAY 8 1973
TG 1/133

SUMMARY OF RECOMMENDATIONS

FINAL PROPOSED RECOMMENDATIONS
FOR TASK GROUP REPORT

We have divided our recommendations for reducing airport and aircraft noise into two parts: those which can be accomplished now under existing laws and those which require additional legislation by the Congress. While we consider both sets of recommendations to be necessary to solve the problems which are presently preventing effective action against the aircraft noise problem, we feel that delay in passing new legislation should not be used as an excuse for failure to take all steps available now to reduce aircraft and airport noise. People living near airport runways continue to be exposed to noise levels which jeopardize their health and interfere with the use and enjoyment of their property. Relief for these people should be delayed no longer than absolutely necessary.

With each recommendation we have included a brief discussion of the considerations which led us to make it. We hope this elaboration will place our suggestions for specific action in a broader context, and make clear what we have in mind and why.

WHAT ACTIONS SHOULD BE TAKEN NOW TO REDUCE NOISE

1) The FAA Should Promulgate Final Noise Emission Standards for all Aricraft Presently in Commercial and Private Use as Soon as Possible.

At present, more than four years after passage of § 611 directing the FAA to set noise emission standards for new and existing types of aircraft, almost 95% of aircraft currently in commercial use[1/] and most private business jets are not covered by such standards. Aircraft types certified before the effective date of the present type-certification regulations (such as Boeing 707, 727, 737, DC 8 and 9) are not covered. This is the great majority of planes, including the noisiest aircraft, and new aircraft of some of these types are still being produced today. In addition, general aviation aircraft remain unregulated. These business jets and helicopters represent a serious and rapidly growing noise problem at many urban airports. While we recognize the expense and technical difficulties involved in retro-fitting older aircraft or reducing total fleet noise levels, we feel final adoption of such standards would provide guidance

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1/ Preliminary figures supplied by Task Group V. In October 1972, only 111 of 2135 aircraft in commercial operation in the U.S. were covered by FAR 36 type certification noise standards.

and incentives to reduce the noisiness of older aircraft which are largely lacking today. Moreover, the legislative history of § 611 makes clear that Congress intended the FAA to set noise standards for such aircraft at the earliest possible date.[2/]

At the very least the FAA should set noise standards for those aircraft types which are still in production today, since modification at time of design and manufacture is much simpler and less costly than later on after the aircraft has been in operation. The FAA has already proposed to include new copies of older aircraft under existing type certification regulations.[3/] We recommend that this proposal be adopted as soon as possible, and that future reductions in FAR 36 noise standards apply to these aircraft as well as other types originally certified under the regulations.

2) The FAA Should Require Elimination of Incompatible Land Use Around Airports As A Condition of Airport Operating Certificates, and Should Issue Guidelines for Definition of Incompatible Land Use.

The Airport and Airway Development Act of 1970, when read together with § 611 of the Federal Aviation Act,

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[2/] Imposition of such regulations was intended by Congress to be mandatory, not discretionary, as soon as such regulations would be effective and practicable. See H.R. Rep. No. 1463, 90th Cong., 2d Sess. 5 (1968).

[3/] 37 Fed. Reg. 14814 (July, 1972).

provides the FAA with the power (1) to set guidelines for airports requesting federal funds for development and expansion, and (2) to attach noise conditions to airport operating certificates. § 18(4) of the AADA requires the Department of Transportation (which has delegated administration of the Act to the FAA) to obtain written assurances from airport sponsors that "appropriate action" has or will be taken to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities compatible with normal airport operations. To date, this approval has been handled on an ad hoc basis, and no guidelines have been issued for what constitutes "appropriate action".

We feel the FAA should require eventual elimination of incompatible land use around all major existing airports, and should attach conditions requiring such elimination to airport operating certificates. One method might be for the FAA to adopt a system for measurement of cumulative noise impact on communities, measure existing noise levels at all major airports, and require a gradual reduction in incompatible land uses over a period of time. This approach is roughly the same as that already in effect in the State of California, which has adopted the Community Noise Equivalent Level (CNEL) system for measuring cumulative noise impact and is requiring a stepwise reduction in airport noise or an expansion of

of compatible land use around airports over a 15-year period.

A problem with this approach is the money inevitably required to buy up property around airports to achieve the desired compatible use "buffer" zone. This figure is not as large as some sources have estimated, since the cost of full fee acquisition can be largely recovered through conversion of the property to profitable compatible uses. Los Angeles International Airport, for example, is purchasing full fee interests in property around its runways and expects substantial revenue from the compatible uses it intends to install (remote air terminals, air freight depots, parking facilities and a golf course are presently planned).[4/] But the initial cost of such an approach may still create difficulties for many airport operators.

One equitable and economically sound solution might be for Congress to establish a trust fund for such initial land acquisition funded by an air user "head" tax on all air passengers and freight shippers.[5/] Money collected from the "head" tax would be used (1) to pay the interest and other carrying costs on long term low- or no-interest loans made by the government to airport operators to buy up and

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[4/] Telephone conversation with Mr. Bert Lockwood, Assistant Manager Los Angeles International Airport, April 30, 1973.

[5/] This proposal is discussed more fully in recommendation 5.

convert surrounding residential and other land determined by the FAA to be incompatible with existing noise levels, and (2) to compensate people living within or without the incompatible areas for any noise damage they may have suffered. This trust fund would place the ultimate costs of elimination of incompatible land use on the persons who most benefit from air commerce, the air user. Federal money from general tax revenues might be added to this trust fund to the degree Congress feels the general public, as distinguished from actual air users, benefit from air commerce. This benefit, although substantial, is relatively small when compared with the immediate and tangible benefits derived from air passengers and shippers.

With the exception of the establishment of the airport noise trust fund, all our recommendations for elimination of incompatible land use around airports (developing a system for measuring cumulative cummunity noise impact and setting stepwise noise reduction standards for all major airports) can be accomplished now by the FAA. Unfortunately, we have little confidence that the FAA will take these actions in the near future. The FAA did develop an index for community noise impact (the Noise Exposure Forecast technique) and at one time intended to promulgate land use guidelines for all major airports, but abandoned these plans when it became clear that the courts might use such standards as evidence of noise damage in

inverse condemnation and nuisance suits.

As will be discussed later, we feel that the EPA would be better qualified to develop and set such standards around airports for cumulative noise exposure.[6/]

WHAT ACTIONS SHOULD BE TAKEN WHICH REQUIRE CONGRESSIONAL ACTION

3) To Eliminate Uncertainty Over the Scope of Federal Preemption and Much Costly Litigation, We Suggest An Amendment to the Federal Aviation Act of 1958 Clarifying Congressional Intent on the Preemption Question, i.e., What Powers are Given Exclusively to the FAA Under the Act and What Powers are Left for State and Local Governments to Control Aircraft and Airport Noise?

At present there is much uncertainty about the scope of regulatory powers of local and state governments. These governments are in most cases reluctant to do anything about airport noise problems in their jurisdictions because any regulations will be challenged by the airlines which contend that state and local regulation in this area

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6/ The EPA's Office of Noise Abatement and Control has been given primary responsibility for development of noise standards for other forms of transportation and products in interstate commerce under the Noise Control Act of 1972 and thus already has or is developing expertise for what levels are necessary to protect public health and welfare. The FAA's expertise, in contrast, is concentrated primarily in the area of aviation safety.

has been preempted by federal legislation. Lawsuits now in the courts challenging a local curfew ordinance and the California airport noise reduction system are examples. Such lawsuits are expensive and time-consuming for all parties involved. Every time a new ordinance is enacted and challenged, many of the same issues are likely to be relitigated.[7/]

The uncertainty over the scope of federal preemption has also contributed to the FAA's failure to take effective action. The FAA has sought to avoid upsetting the present Supreme Court rule that airport operators, and not the federal government, are financially responsible for noise damage around airports. The Court's rationale was that airport operators have some power to control aircraft operations, and must thus bear responsibility for resulting noise. The FAA has refrained from more comprehensive noise regulation lest the courts conclude that local noise control efforts are preempted and shift financial liability for noise damage to the federal government.

Much of the present confusion could be eliminated by an amendment to the Federal Aviation Act clarifying Congressional intent on the preemption question. The

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7/ The Burbank case now pending before the Supreme Court may settle some of these questions. But we feel a legislative clarification of intent on this question would still be desirable.

courts have been placed in the position of having to infer Congresssional intent from a mass of often contradictory evidence, which results in expensive and repetitive litigation. To eliminate this problem, Congress should expressly state which powers it intended to give exclusively to the FAA, and which powers could be exercised concurrently by the FAA and state and local governments.

The question of which powers should be given to the FAA exclusively and which may be shared by state and local governments is a difficult one. It is probably preferable to leave regulation where uniformity is not required to local governments. Although for safety reasons many operating rules (such as flight path location) will have to continue to be determined exclusively by the FAA (since such rules require coordination among many airports and uniformity), local communities might, for example, retain power to set restrictions on the number of flights per day using certain flight-paths over noise-impacted neighborhoods, and states should have the authority to set land use compatibility requirements more stringent than those established by the federal government. Such a policy would leave much power to control noise in the hands of the people most affected by the problem, while ensuring that those aircraft operations requiring uniform rules and coordination will not be in conflict.

4) To Ensure Development of Guidelines for Elimination of Incompatible Land Use Around Airports Which Adequately Protect Public Health and Welfare, The Noise Control Act of 1972 Should Be Amended to Require the Office of Noise Abatement and Control of the Environmental Protection Agency to Develop and Adopt a System for Measuring and Reducing Cumulative Noise Impact Around Airports and to Use the System to Obtain Quantitative Data for All Major Airports in the United States.

As stated in Recommendation 2, the FAA already has the power to develop such guidelines for elimination of incompatible land use but has failed to do so. We feel that the EPA is better qualified to develop such standards and regulations because of its mandate under the Noise Control Act to set such quantitative standards adequate to protect public health and welfare in many other fields, including ground transportation. In addition, the EPA is not faced with the institutional conflict between promotion of cheap, efficient air transportation and expensive noise control measures which confronts the FAA.[8/]

We have in mind a system similar to that now in use in California, where a cumulative noise index (CNEL) was adopted and a timetable established for a stepwise reduction

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[8/] This is not to suggest that the EPA or any other public agency should set noise standards without consideration of cost. Rather it stems from the recognition (more fully discussed in our draft of Part 3) that the FAA has, in pursuing its authorization to promote cheap air transportation so fully identified itself with the airlines that it has been incapable as an institution of acting on behalf of other interests, such as the noise-impacted public, where such action is strongly opposed by the airlines.

in airport noise levels or incompatible land area. We feel the EPA should promulgate and enforce such a system for all major airports across the country. Such airport noise reduction and elimination of incompatible land use conflicts in no way with the FAA mandate to preserve air transportation safety. The EPA would not, for example, be given the power to set design noise criteria for new and existing aircraft, such as are now contained in the type certification regulations. The cumulative noise limit regulations adopted by EPA would be directed at land use, and would be set to protect public health and welfare. Such regulations would be a significant step toward internalizing noise costs and eliminating the inequitable situation of leaving the costs of noise on the people who happen to live near airports. The internalization of costs, as more fully explained in numerous economic analyses, would encourage a more optimal allocation of transportation resources.

We feel full fee land acquisition and conversion of incompatible to compatible uses is the best solution to the problem of noise-impacted areas around airports. To accomplish this goal of compatible land "buffer" zones around airports without putting an impossible financial burden on airport operators, airlines or local taxpayers, we suggest an air user "head" tax partially subsidized out of general taxpayer revenues, discussed more fully in Recommendation 5.

5) To Help Finance the Cost of Eliminating Incompatible Land Uses Around Airports While Placing the Costs of Noise Reduction Primarily on the Air User, the Congress Should Pass Legislation Establishing an Airport Noise Trust Fund to Be Funded by a Head Tax on Air Passengers and Freight Shippers and Used to Provide Low-or No-Interest Loans to Airport Operators for Purchase of Full Fee Interests in Residential and Other Property Determined by the EPA to Be Incompatible with Existing Airport Noise Levels and to Compensate People Living Within and Without the EPA-Determined Areas for Any Noise Damage They May Have Suffered.[9/]

This proposal is somewhat similar to the head tax recently imposed on air passengers at airports near Paris, France, but it differs in that the money collected would be used to pay interest on long term government loans to airport operators for acquisition of property within EPA-determined zones of incompatible land use around airports rather than exclusively for remedial measures such as soundproofing homes.

[9/] We have not attempted to work out the details of the trust fund mechanism, and recognize that more work and refinements are required. For example, it would be useful to know how much the average head tax per passenger would be, given different assumptions. We do not have the expertise or information to make such calculations to test the practicability of the proposal, so it must necessarily be regarded as tentative.

The trust fund would also be used to compensate those who have suffered demonstrable noise damage. To ignore such past damage would be unfair to the people who have been injured. The costs should be borne by those who benefit rather than allowing them to lie on those who chance to live or work in noise-impacted areas. Since the aircraft operator is less able to pass the costs of damage compensation on to aircraft users, we would impose that liability on the federal government which could set the proposed head tax accordingly and better administer and distribute the funds collected.

It is our feeling that acquisition of full fee property interests is preferable to acquisition of noise or airspace easements and to payment of noise damages. With easements and damages the airport operator is unable to take advantage of the economic benefits the location of the airport has created for nearby property owners, and may end up paying much of the market price of the property over a period of time without acquiring permanent title to the property. By full fee acquisition the airport operator in a real sense has taken a constructive step towards reducing the noise problem by placing a buffer strip between the airport and residential neighborhoods. He may also derive substantial revenue from converting the acquired property to more compatible uses, such as terminals and parking areas.

The costs of land acquisition initially will be substantial, although much of the cost may eventually be recovered through revenue from the more compatible uses just discussed. For this reason we feel it would be inequitable and economically unsound to expect that airport operators, airlines or even local taxpayers should be required to bear this initial expense. Accepted economic theory states that beneficiaries of an activity such as air commerce should bear its true costs, in order that the market may accurately decide the desirability of that activity as compared to other competing ones. Thus the air users (the air passengers, general aviation users and air freight shippers), who are the primary beneficiaries of air commerce, should be the ones to pay the majority of the costs of eliminating incompatible land uses around airports.

The mechanisms we propose for this placement of costs on the air user is a passenger and shipper "head"tax, which would fund a trust for land acquisition and conversion around airports. We recognize that there are other beneficiaries of air commerce besides air passengers and shippers. Everyone who uses the mails to some degree benefits from air commerce. But we feel on balance that these secondary benefits are small when compared to the more direct and substantial benefits passengers and shippers derive. To compensate for these secondary benefits, we feel the trust fund could in part be supplemented by funds taken from general tax revenues.

But we stress that the percentage of such a contribution should be relatively small, so that the more important beneficiaries pay most of the costs.

Money from the head tax would be used in part to pay interest and other carrying costs on long-term, low- or no-interest loans by the federal government to airport operators to finance full fee purchase of land determined to be incompatible with existing noise levels. The airport operators would repay the loans over specified periods of time from revenues from compatible uses such as parking areas, air terminals, and hotels which they establish in the areas purchased. Interest payments on the loans would be paid for by a small increase in passenger fares and freight rates while incompatible areas were converted to compatible uses. At the end of the period the trust fund would be discontinued.

A second use for trust fund money would be to compensate those who have suffered and can prove noise damage. The law establishing the trust fund could set a period of limitations for such claims to be filed. No claims after the cutoff date would be allowed. It might be best to establish a special compensation board which would have expertise in the types of damage suffered and would contribute equitable uniformity to compensation awards.

Because of the large amount of money initially required to convert incompatible uses to compatible ones, it would probably be desirable to plan a stepwise elimination of incompatible uses over a ten- to twenty-year period,

following the example of California's airport noise law. EPA areas of incompatible use might be divided into several belts around airports. Airport operators would receive federal loans to purchase and convert land in the innermost belt first, and then purchase and convert outer belts at required time intervals. Property prices for condemnation purposes could be determined as of establishment of the trust fund. An alternative plan might be to condemn all land considered incompatible by the EPA at one time, but allow present uses to continue and in effect pay rent until they were finally displaced, thus reducing the final cash price paid for the property. These schemes are intended to spread acquisition costs out over a period of years and reduce the size of the loan initially needed to airport operators for such a conversion.

TVASNAC

TOWN-VILLAGE AIRCRAFT SAFETY & NOISE ABATEMENT COMMITTEE

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CLIFFORD A. DEEDS
Director

TOWN OF HEMPSTEAD
Villages of
ATLANTIC BEACH
CEDARHURST
EAST ROCKAWAY
FLORAL PARK
GARDEN CITY
HEMPSTEAD
HEWLETT BAY PARK
HEWLETT HARBOR
HEWLETT NECK
ISLAND PARK
LAWRENCE
LYNBROOK
NEW HYDE PARK
RUSSELL GARDENS
STEWART MANOR
VALLEY STREAM
WOODSBURGH
City of
LONG BEACH

May 1, 1973

Ms. Elizabeth Cuadra, Chairman
Task Group 1
Office of Noise Abatement
Environmental Protection Agency
1111 20th Street, N.W. - 5th floor
Washington, D. C. 20036

Dear Ms. Cuadra:

Re: Section 5 Recommendations

Your telegram of 27 April 1973 requested proposal recommendations for inclusion in Section 5, to be in your hands no later than May 4th. During the second meeting of T.G.1 on 2 March 1973 TVASNAC made an oral presentation and provided written data to all present. This data, on file with you, included specific recommendations.

May we add to these recommendations a request to Congress for a clarification of its' intent in the term "economically reasonable" as used in Section 611(b)(4) of P. L. 90-411.

Yours for a quieter sky,

Clifford A. Deeds
Director

CAD:dt

RECEIVED
15 MAY 1973 I-A-103
TG 1/145

RECOMMENDATIONS BY TVASNAC

1. An airport curfew.
2. Controlled industrywide capacity agreements.
3. Control of aircraft noise over residential areas contiguous to airports.
4. Airport ground noise regulations.
5. A joint industry-government retrofit program.
6. A joint industry-government R & D program for new aircraft.
7. Establishment of maximum noise operating levels.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Mrs. Elizabeth Cuadra
Office of Noise Abatement and Control
Environmental Protection Agency

DATE: May 4, 1973

FROM : Joan S. Gravatt
Aviation Programs and Policy Division
Department of State

SUBJECT: Recommendation for Inclusion in Section V of Task Group I's Report

Recommendation

The United States should continue to cooperate in the work the International Civil Aviation Organization (ICAO) is doing on aircraft noise.

Discussion

As the major producer of transport aircraft and source of international air passengers, the United States has a large stake in ensuring that there are internationally recognized noise standards. Thus, U.S. ability to sell aircraft and U.S. air passengers to travel without hampering noise restrictions in all parts of the world can be assured. We have no reason to believe that ICAO Standards on aircraft noise would not be satisfactory. Other countries just like the United States are concerned with the problem of aircraft noise. The work done by ICAO so far in its Annex 16 on aircraft noise demonstrates that it can produce adequate international standards in this area. If there are variations between U.S. noise standards and the international standards, the U.S. has the right to file "differences" with ICAO.

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