



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

Jan 18, 2000

The Honorable Brad Sherman
House of Representatives
Washington, DC 20515-0524

Dear Congressman Sherman:

Thank you for your December 22, 1999, letter regarding application of the Airport Noise and Capacity Act (ANCA) to proposed amendments to the Van Nuys Airport Noise Control Ordinance (the Ordinance). Each of your questions is separately addressed below.

1) If the City of Los Angeles approves the proposed Non-Addition Rule that is presently under consideration, can the City, then, approve amendments to the rule at a later date that would further restrict aircraft activity at the Van Nuys Airport, assuming that the future amendments would not surpass the restrictions that the original, grandfathered, ordinance included?

ANCA and the Federal Aviation Administration (FAA) regulations implementing it (14 C.F.R. Part 161) would not apply to such "future amendments" provided they were not more restrictive than the original pre-ANCA proposal. The FAA has previously indicated that the original proposal is grandfathered under 49 U.S.C. § 47533(2). That provision states: "Except as provided by section 47524 of this title, this subchapter does not affect- (2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990;"

Nothing in ANCA or its legislative history specifically addresses application of this provision to the scenario presented in your question. However, one of the primary purposes of ANCA was to address the problem of "uncoordinated and inconsistent [local] restrictions on aviation that could impede the national air transportation system." 49 U.S.C. § 47521(2). Reading § 47533(2) as extinguishing the grandfathered status of a proposed restriction whenever a less restrictive measure is adopted would be inconsistent with this purpose because it would discourage airport operators from experimenting with less restrictive measures that would have less potential to "impede the national air transportation system." The FAA is aware that the City of Los Angeles (the city) is contemplating the possibility that if the current less-restrictive proposal is adopted it may need to be made more restrictive in the future. In light of ANCA's purpose, the FAA believes it is reasonable to read the statute as preserving the grandfathered status of any such future amendment that falls within

the scope of the original pre-ANCA proposal. The advance notification to the FAA in this circumstance has been particularly helpful.

2) What will happen if the City of Los Angeles defeats the current proposal? Will the City lose the opportunity to approve a different version in the future? Does the City only have one opportunity to vote on a Non-Addition Rule ordinance?

Defeat of the current proposal would not affect the grandfathered status of the city's original proposal. Although ANCA does not specifically address this issue, nothing in the statute or its legislative history dictates that defeat of the current proposal would have a different effect than its adoption on the grandfathered status of the original pre-ANCA proposal. Moreover, interpreting ANCA as extinguishing the original proposal's grandfathered status should the current proposal be defeated would be inconsistent with the statute's purpose as noted in the response to Question 1 because it would discourage airport operators from considering adoption of less-restrictive alternatives to grandfathered proposals.

Please note that the only issue addressed by this letter is the applicability of ANCA. The FAA has received letters from the National Business Aviation Association (NBAA) expressing concerns about the current proposal and raising additional issues. Although Stage 2 restrictions that are "grandfathered" under ANCA are not subject to the statute's requirements, the NBAA correctly notes that such restrictions must still meet standards under pre-existing federal law, including federal grant obligations. 49 U.S.C. § 47533(1) (ANCA does not affect "law in effect on November 5, 1990, on airport noise or access restrictions by local authorities). Airport noise and access restrictions must be fair and reasonable, may not be unjustly discriminatory, and may not impose an undue burden on interstate or foreign commerce. British Airways Board v. Port Authority of New York and New Jersey, 558 F.2d 75, 82, 84 (2d Cir. 1977). We note that the exemptions in the current proposal that would allow replacement of existing Stage 2 aircraft and exempt Stage 2 aircraft that visit the airport for repairs and maintenance should enhance the reasonableness of the proposal.

I trust that this information is helpful. If you or your staff needs further assistance, please contact Ms. Suzanne Sullivan, Assistant Administrator for Government and Industry Affairs, on (202) 267-3277.

Sincerely,

Nicholas G. Garaufis
Chief Counsel