

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF CALIFORNIA

FILED

Regarding the Application for Variance
to Section 5012 of the Noise Standards,
California Code of Regulations, Title 21,
for Ontario International Airport

DATE 10/21/08

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

by *Emilia Kull*
Administrative Hearings Clerk

DECISION

The Department of Transportation ("Department") has determined it is in the public interest to grant the Ontario International Airport (ONT) a variance to Section 5012, Title 21, of the California Code of Regulations (Noise Standards) with an effective date of November 22, 2008. This Decision responds to the application for a variance filed on April 12, 2007, by the City of Los Angeles' Los Angeles World Airports (LAWA), the proprietor of ONT.

BACKGROUND

The Department may grant a variance to Section 5012 of the Noise Standards if to do so would be in the public interest (Noise Standards Section 5053). The Department recognizes that ONT is a major transportation facility and economic asset to the City of Ontario, other cities in the Inland Empire, and to the counties of San Bernardino, Los Angeles, Riverside, Orange and Ventura as shown by evidence provided to the Department in a previous variance proceeding. The Department also recognizes the importance of ONT to the statewide and national system of airports.

ONT could only achieve immediate compliance with Section 5012's requirement that the airport have a zero Noise Impact Area (NIA), in lieu of having a variance, by a major reduction in air carrier and air cargo flight operations or by the immediate mitigation of hundreds of incompatible land uses.

The instant reduction of flight operations to meet the requirement of a zero NIA would have a serious negative economic effect on the entire airport service area. It would be detrimental to local businesses and to the employment situation in the five county service area. It would force travelers to other airports that are more distant thereby increasing automobile fuel consumption, air pollution, traffic congestion, and would likely cause safety degradation on freeways, surface streets, and alternate airport facilities.

To achieve a zero NIA through the immediate mitigation of hundreds of incompatible land uses would not be economically feasible considering the number of residential units yet to be mitigated and the estimated cost for each unit.

The variance procedure is a necessary consideration under these circumstances. The

Department is not aware of any substantive opposition to the grant of a variance with conditions that are legal, within the authority of the Department to order, economically and technologically feasible, and worthwhile from the aspect of reducing noise problems.

Since 1986, when the criterion for the NIA became a CNEL of 65 dB, the NIA for ONT has fluctuated in size, achieving a maximum size in excess of 1100 acres at one point. However, there was a relatively steep downward trend in the NIA from early 1993; with a plateau and some increase in the mid-1990's; and a continuing downward trend from mid-1998 until the end of 2004. This downward trend was apparently due to a combination of noise impact area reduction methods currently being implemented. Since early 2005, however, runway construction projects at ONT have prevented the consistent use of contra flow operations to the east during the nighttime hours of 10 p.m. until 7 a.m. As described in LAWA's 4Q06 quarterly noise report, "[c]onsequently, noise levels to the west of ONT have generally increased while noise levels to the east have decreased. This has resulted in a significant shift in the annual average noise contours to the west and a little to the north and a growth of the noise impact area. Now that both runways are open and contra flow operations have resumed, it is expected that the annual average noise levels will gradually return to previous levels as seen in late 2004/early 2005." The Department agrees a reduction in the size of the noise impact area to preconstruction levels is a reasonable expectation. The Quarterly Report of Noise Monitoring for the Second Quarter of 2007 indicates the NIA is now 79.6 acres in size and includes 354 dwelling units.

The early history of the development of ONT was recorded in a previous variance issued by this Department. It need not be repeated here. However, it is noteworthy that a new runway (26L/8R) was built in 1981 with the easterly threshold located 2,200 feet east of the threshold of the old runway. This allows aircraft to be higher when passing over the City of Ontario located to the west of the airport. In 1987, the original runway (26R/8L) was overlaid, reinforced and extended eastward an equal amount (2,200 feet) so that both runways permit westerly aircraft departures to be higher over the community, which lessened surface noise impact.

A Noise Control Program has been in place for many years at ONT. In 1983, LAWA's predecessor formally updated its Noise Control Program through BOAC Resolution No. 13513. Since that time, additional amendments to the overall noise program have been made. Some of the pertinent issues within the all inclusive noise control program are that it:

- includes a preferential runway use procedure
- prohibits flight training by jet powered air carrier aircraft except upon prior approval
- prohibits jet engine runups during the late night hours

- provides for the continuation of airport noise monitoring
- designates airport staff to deal with noise management issues
- establishes a 24-hour noise complaint telephone line

The Federal Aviation Administration (FAA) has implemented those parts of the ONT Noise Control Program under its control.

The City of Los Angeles and the City of Ontario jointly conducted an Airport Noise and Land Use Compatibility Study under Federal Aviation Regulation (FAR) Part 150. The study was completed in 1990, and reviewed by the FAA in 1991. Of the twenty-two elements contained in the Part 150's Noise Compatibility Program, the FAA approved twelve, disapproved nine, and one element received no action. Among other things, the approval of this plan makes acoustic treatment projects, and in some cases, the acquisition of residences that are subjected to relatively high noise levels (above 70 dB CNEL) eligible on a priority basis for Federal funding. Acoustic treatment was approved for approximately 3,300 dwelling units, and for four schools that are inside the NIA. The relocation of a fifth school (Bon View Elementary) was approved later as a result of the short-lived increase in the NIA enclosing it. These types of projects are currently underway, and the City of Los Angeles, through LAWA, has thus far paid the local government portion of the funding involved.

ORDER

In accordance with the above information, the Department hereby grants a variance from Section 5012 of the Noise Standards for ONT. This variance is subject to the following terms and conditions:

1. The term of this variance is three years from its effective date.
2. LAWA is requested to continue implementing its Noise Control Program established in BOAC Resolution No.13513 with the exception of those elements that have been fully completed or disapproved by the FAA. The Department recognizes that said Program may need updating from time to time.
3. LAWA shall work closely with the FAA in an effort to have FAA continue implementation of the ONT preferential runway use program, including the use of contra-flow air traffic control procedures whenever it is safe to do so.
4. LAWA shall continue to work with the City of Ontario and appropriate school districts toward the implementation of the residential and school acoustic treatment programs, and any property acquisition programs that currently exist pursuant to the Ontario FAR Part 150 Noise Compatibility Program and its several provisions which were approved by the Los Angeles BOAC, the Ontario City Council, and the FAA.

5. LAWA shall continue to meet with the Ontario Airport Noise Advisory Committee (OANAC), which shall be constituted as follows:

- two members representing citizens living in the City of Ontario (at least one living in the NIA for ONT is encouraged, but not mandated),
- one member representing ONT,
- one member representing schools impacted by noise,
- one member representing airlines operating at ONT,
- one member (possibly ex-officio) representing the FAA Air Traffic Control Tower together with an additional representative from the Southern California Approach Control Facility (SoCal Approach) located in San Diego when determined necessary by the members of the OANAC, and when such representative is available, and
- one member representing the City of Ontario

The purpose of this Committee shall be to provide a forum for use by LAWA and the Ontario community for discussion, education, and development of concepts and recommendations concerning the resolution of noise issues. LAWA shall advise the members of this committee of noise related issues affecting, or being considered in regard to ONT, and shall provide staff services as necessary to see that minutes are prepared for each meeting, and that recommendations of the OANAC are prepared in writing and forwarded to the Airport Manager at ONT with a copy provided to the Chairperson of the BOAC of the City of Los Angeles. No other contact between this committee and LAWA, or any other agency or person, is intended. The OANAC shall meet quarterly, unless its members decide otherwise. The meetings shall be organized and scheduled by the committee. As vacancies occur, the ONT representative shall notify the agency or group with the member vacancy, which shall select replacements that will maintain the committee's composition as described above. The City of Ontario is responsible for appointing replacements for members representing the City of Ontario and the citizens living in the City of Ontario. A quorum shall be at least half the committee's membership. If the agency or group with the member vacancy does not appoint a replacement member as described, that vacant position shall not count as a member for the purpose of achieving a quorum.

6. Aircraft Noise Mitigation Program (ANMP).

(a) LAWA shall continue to implement its Aircraft Noise Mitigation Program (ANMP) as described and initiated pursuant to the Department's 1995 and 2000 variances for ONT. ONT, with the assistance of the City of Ontario, shall update the entire ANMP from time to time to ensure that it reasonably represents the mitigation and funding programs that are in place, being implemented, or proposed for future

implementation. The ANMP shall be designed to ultimately fund the mitigation of all incompatible land uses within the noise impact boundary as defined in the Noise Standards. The City of Ontario shall have the opportunity to comment on the ANMP.

(b) LAWA, with the assistance of the City of Ontario, shall prepare an annual update of the numbers and tabular information within the ANMP that shows the total annual funding available and the annual performance of the City of Ontario in its efforts to achieve the mitigation of incompatible land uses. LAWA shall include this updated information with its second calendar quarter "quarterly report" information that it submits pursuant to the reporting requirements within the Noise Standards. In updating the ANMP, LAWA shall request and consider any new information provided by the City of Ontario.


(c) A general guideline for establishing project priorities is to mitigate highly impacted noise areas first. However, this guideline should not be interpreted to prohibit the simultaneous implementation of both an acquisition program and an acoustic treatment program for properties that will continue to lie inside the 65 dB CNEL noise impact boundary.

7. LAWA shall continue to provide staff to respond to citizen complaints relative to noise, to work with OANAC, and to assist with implementing its Noise Control Program.

8. LAWA shall continue to prepare and forward reports of noise monitoring on a quarterly basis as required in Sections 5025 and 5030 through 5034 of the Noise Standards. Such reports shall also include a summary of actions taken by LAWA to comply with the specific requirements imposed by conditions of this variance.

9. This variance excuses ONT from meeting the requirement that there be no NIA based upon the standard identified in Section 5012 of the Noise Standards for the term of this variance. However, in the event that LAWA violates any of the aforementioned terms, conditions, or requirements of this order, such conduct shall constitute a cause for the termination or further conditioning of this variance. Pursuant to Public Utilities Code Sections 21669.2(a) and 21669.4(b) and Section 5022 of the Noise Standards, it is the function of the county wherein the airport is located to enforce the Noise Standards.

The Department of Transportation adopts this decision on October 23, 2008, with an effective date of November 22, 2008.



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California Department of Transportation