

December 23, 2013

Shawn Hamilton
City Manager
City of Park Ridge
City Hall, First Floor
505 Butler Place
Park Ridge, IL 60068

Re: 14 C.F.R. Part 161 - Process for Approval of Local Noise or Access Restriction

Dear Shawn:

This is in response to your request for an analysis of the rationale and process for, and benefits of, an application to the Federal Aviation Administration ("FAA") for approval of local airport noise abatement measures at O'Hare International Airport ("O'Hare") pursuant to FAA regulation 14 C.F.R. Part 161 ("Part 161"). Part 161 is FAA's regulation implementing the requirements of the Airport Noise and Capacity Act of 1990, 49 U.S.C. § 47521, *et seq.* ("ANCA"), which requires, and sets forth a process for obtaining, FAA approval of local airport noise and access restrictions.

As a threshold matter, please be advised that, while Part 161 is only one mechanism of compensation for the serious noise impacts suffered by Park Ridge, it is the only one whereby a local airport noise or access restriction such as the currently voluntary "Fly Quiet" program for relieving nighttime noise may be made mandatory. Moreover, the process mandated by Part 161 is administrative and collegial, rather than adversarial, in that it will require a cooperative effort, not a confrontation, with the airport operator and your neighboring jurisdiction, the City of Chicago.

The essence of 14 C.F.R. Part 161 is the development by the local airport proprietor and submission to the FAA of "any . . . limit on . . . aircraft that has the effect of controlling airport noise." 14 C.F.R. § 161.5. With that in mind, the following sets forth: (1) the general definition, history and legislative intent behind Part 161; and (2) the process required for submission and approval of a noise or access restriction. The additional political challenge of obtaining the necessary cooperation by the City of Chicago as airport operator, various airport support and pilot support groups, and the United States Congress, is not covered extensively in this communication beyond recommendations of the themes that might be applicable in this case.

I. HISTORY AND APPLICATION OF 14 C.F.R. PART 161

14 C.F.R. Part 161 arises out of Congress' passage of ANCA. In that legislation, Congress found that "community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system," 49 U.S.C. § 47521(2), and, thus, "a noise policy must be carried out at the national level," 49 U.S.C. § 47521(3). Congress thus expressly took over, or preempted, local prerogatives with respect to airport noise control, including restriction on noise levels generated on either a single event or cumulative basis; restriction on the total number of Stage 3 aircraft operations; noise budget or noise allocation program that would include Stage 3 aircraft; restriction on hours of operation; and any other restriction on State 3 aircraft. 49 U.S.C. § 47524(c)(1)(A)-(E). In the place of approval of restrictions for each local airport, Congress substituted either that: (1) "the restriction [must] be agreed to by the airport proprietor and all aircraft operators," 49 U.S.C. § 47524(c)(1), or (2) it "has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request. . ." *Id.* Clearly, therefore, neither local proprietors nor surrounding jurisdictions can make or implement a restriction, other than a voluntary one, that limits noise or access for Stage 3 aircraft (the only aircraft currently in the United States fleet) without the approval of the FAA.

II. THE PROCESS FOR CREATING AND IMPLEMENTING A PART 161 APPLICATION

14 C.F.R. § 161.301, *et seq.*, sets forth in detail the process for making an application consistent with the requirements of ANCA. That process requires submission by the airport operator to the Secretary of Transportation, through his/her designee, the FAA, 14 C.F.R. § 161.301(c), of the "essential elements needed to provide substantial evidence" that all the statutory conditions are met, 14 C.F.R. § 161.305(e). Those conditions include: (i) the proposed restriction is reasonable, nonarbitrary and nondiscriminatory; (ii) the proposed restriction does not create an undue burden on interstate commerce; (iii) the proposed restriction maintains safe and efficient use of the navigable airspace; (iv) the proposed restriction does not conflict with any existing federal statute or regulation; (v) the applicant has provided adequate opportunity for public comment on the proposed restriction; and (vi) the proposed restriction does not create an undue burden on the national aviation system. 14 C.F.R. § 161.305(e)(2)(i)-(vi).

Each of these sections must be supported by detailed analyses including, for example, an analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented; evidence that current or projected noise or access problem exists and that the proposed action could relieve the problem; evidence, based on a cost benefit analysis that the estimated potential benefits of the restriction have a reasonable chance to exceed the estimated potential costs of the adverse impacts on interstate and foreign commerce; analysis of the effects of the proposed restriction with respect to the use of airspace in the vicinity of the airport substantiating that the restriction maintains or enhances safe and efficient use of navigable airspace; evidence demonstrating that no conflict exists between the proposed restriction and any existing federal statute governing exclusive

rights, control of aircraft operations or federal grant agreements; and an analysis demonstrating that the proposed restriction does not have a substantial adverse effect on existing or planned airport system capacity, congestion or delay. *Id.*

Obviously, these are difficult standards to meet, especially at a vital hub such as O'Hare. However, they are not, in substance, different from the information required by any analysis presented by an airport operator in support of a new runway or other airport project requiring FAA funding.¹

III. PROCESS FOR GAINING POLITICAL SUPPORT FROM THE CITY OF CHICAGO, AVIATION GROUPS AND THE UNITED STATES CONGRESS

None of these tasks can be accomplished by Park Ridge alone. It is therefore imperative that a process be commenced to designate a restriction or restrictions that would accomplish Park Ridge's noise reduction goals (such as a nighttime Fly Quiet program). To effectuate this task will require: (1) community input; and (2) the designation of technical consultant or consultants who can evaluate the public's recommendations under the standards established in Part 161.

After the initial task of creating and documenting alternative mitigation measures is completed, Chicago will have to become the lead agency, requiring significant interface by Park Ridge with the airport and Chicago community leaders to convince them of the positive potential of the proffered measures and the absence of impact on O'Hare's operations. At the same time, initiatives with pilots groups such as the Airline Owners and Pilots Association ("AOPA"), the American Association of Airport Executives ("AAAE") and the Cargo Airline Association will be absolutely essential to preempt any opposition on the part of those organizations, as they wield significant weight in the aviation community.

Finally, it will be essential to establish contact with members of the United States Congress who saw fit to enact ANCA in the first instance. While few if any Part 161 applications have been approved by FAA since 1990, pressure from above, and particularly members of the House and Senate Aviation Subcommittees will likely have a significant impact on FAA's decision to approve a Part 161, especially one that makes mandatory a procedure like the voluntary Fly Quiet Program at O'Hare that has already been in effect for a substantial period of time.

As a final reminder, it must be noted that the Part 161 avenue is not without pitfalls. However, it is the least contentious, and least expensive route to accomplishing what the citizens

¹ There are exceptions to these requirements set forth in 49 U.S.C. § 47524 and 14 C.F.R. § 161.7. However, each of the exceptions was created for a specific airport such as John Wayne Airport in Orange County, California and San Jose Airport in Northern California. None of the exceptions applies to O'Hare.

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of Park Ridge have been demanding, an enforceable Fly Quite Program during the hours of 12:00 midnight and 6:00 a.m. If you have any questions, please don't hesitate to call.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 

Barbara Lichman