



**Hillsboro Airport Roundtable Exchange**  
**May 1, 2013: Hillsboro Civic Center, 5:30 p.m. – 7:30 p.m.**

Meeting Summary

MEMBERS PRESENT

Bob Braze	Alternate for House District 29 (Jurisdictional)
Brian Lockhart	Global Aviation (Airport Business)
Cathy Stanton	Westside Economic Alliance (Business)
Clint Bedwell	Federal Aviation Administration (Technical)
Debbie Raber	City of Hillsboro (Alternate for Mayor Willey)
Joe Fiala	Federal Aviation Administration (Technical)
Fred Hostetler	Citizen (Land owner adjacent to HIO)
Henry Oberhelman	CPO 8 (Citizen)
Jack Lettieri	Citizen
Ken Dyar	Hillsboro Airport Business Association (Airport Business)
Mike Gallagher	Citizen
Rudi Resnick	Alternate for Senate District 15 (Jurisdictional)
Stephen Roberts	Alternate for Washington County Commission (Jurisdictional)
Steve Nagy	Port of Portland

MEMBERS ABSENT

Annette Campista	Latino Business Community
Bert Zimmerly	Hillsboro Airport Historian
Bob Flansberg	Alternate for House District 30 (Jurisdictional)
Deanna Palm	Hillsboro Chamber of Commerce (Business)
Kimberly Culbertson	CPO 9 (Citizen)
Mike Warrens	Oregon International Airshow

CURRENT MEMBERSHIP VACANCIES

Citizen At Large  
Airport Business  
Environmental group (Citizen)

## SUMMARY

### *Introductions and Welcome*

Fred called the meeting to order. Everyone in attendance introduced themselves and what agency/interest that they represent.

Debbie Raber gave a quick legal update. LUBA dismissed the challenge that Oregon Aviation Watch brought forth regarding changes in the City of Hillsboro code. There is a 30 day appeal period in which Oregon Aviation Watch could appeal the finding should they choose. The City has not yet heard whether or not they will appeal the decision.

Stephen Roberts moved to approve the meeting minutes and Bob Braze seconded the motion. Everyone approved.

### *Noise Working Group Overview*

Fred went through the different suggestions that the HARE noise working group has identified as areas for possible areas of focus.

### Communications

- “Fly Friendly” branding
- Updated website copy
- Dedicated URL: Brooke stated that the URL would take people directly to the HIO page on the Port’s webpage rather than a dedicated separate site. (An example is going to [www.pdx.com](http://www.pdx.com) instead of going [www.portofportland.com](http://www.portofportland.com) and clicking on the Airports tab).
- Outreach to other communities related to aviation noise impact and possible solutions: This would look at what other airports are doing and use some of their solutions for Hillsboro.
- Fly-Ins/BBQ: This would allow for people to be able to have people flying in and out of Hillsboro to come and meet each other and also interface with the public. Cathy commented that she loved this idea. She said she wasn’t sure how you go about doing that, but she really liked this idea. She asked if there was a list of frequent users that have flown into HIO more than three times in the last five years. Fred said that he said the best way to get people would be to send flyers out to other local airports inviting them out to HIO for a day/weekend.
- Face-to-face volunteers: This alternative would have volunteers who would go talk with people in hangars, providing them someone who is knowledgeable about the Fly Friendly program.
- Local airport outreach: Providing a place for pilots and the community to meet would encourage conversations sharing ideas and thoughts about flying in and out of Hillsboro Airport.
- Continue or expand the HIO open house: This could connect with the previous line item. The open house provides an opportunity for education to the general public on why pilots have to fly in certain ways. Mike said one thing to add to the open house would

be to have one of the corporate operators bring out one of their aircraft and talk about the importance of the airport. He suggested that Ken maybe try and reach out to one of the larger businesses. Ken said the major issue with bringing those planes out there is security. Many of the aircraft are owned by other people and the company at Hillsboro just manages them. Fred said that he doesn't think you need to allow the general public to go through the airplane, but rather just bring them out onto the tarmac in front of the event. He said that he thinks Intel has the largest corporate shuttle in the world. He feels that there aren't any reasons why Intel can't have a plane out there.

- Community surveys regarding noise awareness and impact: This was submitted as part of the work online by the working group. Cathy said she did not submit the item, but she thinks it means that it is just reaching out to people to see how many people are impacted vs. the number of people who have talked to the noise office. Henry said that he also really likes the idea as well.
- Newsletter: This would be generating something to provide information about Hillsboro Airport. Cathy asked who the audience would be and Fred stated it would be the general public.
- The Pilot Good Neighbor Pledge Form: Signed by pilots who are flying in and out of the airport. This could be mimicked on other airport's work as well. Fred feels that this would be of concern because there is not a central way to reach out to the community of pilots as there is no central meeting place. Steve said that some of Jack's research has some examples of what this will look like. Mike said that he would like to see something in the communications category that reaches out to the transient pilots. Something quick and easy for the FBOs to pass out to people fueling their aircraft would be best.

#### Operational

- Materials: Provide materials that list the AOPA/NBAA/HAI standards that are all national standards for how aircraft should operate their aircraft in the most effective manner.
- Memorandum of Understanding with HIO tenants: Ken said that there is a lot of work to do on that front and Fred said he feels this is a strong possibility.
- Fixed wing and helicopter training patterns: Look at the existing patterns for helicopters and fixed wing aircraft to see if there are opportunities for improvements.
- Arrival/departure procedures: Look at the possibility of applying a more standard arrival/departure procedure for VFR approaches/departures.
- VFR reporting points
- FAA safety meetings: Talk to the FAA about covering noise as well as other issues. Fred thinks that it is the FAA's policy to not address noise in their safety meetings. Steve said that there might be some options of working with the FAA to split up the meeting to discuss safety at part of their meeting and then do something focused on noise.
- Voluntary hours of operations for flight training: This would be similar to an MOU as highlighted previously. Steve suggested that he wanted to clarify that this would need to coincide with reaching out with transient pilots as well as to ensure that people from other airports are not aware of the program.

- Engine maintenance run-up policy and locations: The Port is currently already working on this initiative.
- Noise abatement signage at runway ends: Could be used to inform pilots about noise abatement procedures. Bob said that other smaller airports have some of those types of signs on their fence/entry areas rather than putting them on the airfield. It would not require the coordination with the FAA.
- VFR aircraft climb on runway heading to 1000' before turning
- Encourage use of pilot operating handbook for each aircraft type

#### Land Use Compatibility

- Building standards: Would look at what the building standards are with the City as far as double paned windows and noise insulation standards are in the same category. Brooke clarified that this was also looking at providing information for the developer for areas that may be more noise sensitive than other areas. Cathy asked if the City has pre-app meetings with permit applicants that would allow for some of this information to be shared with the developers. Debbie said yes.
- Zoning standards: Will be reexamined by the City of Hillsboro once their community zoning changes are complete. Some of the zoning requirements are limiting the types of uses (schools, daycares, etc) and then what the building itself looks like and does such as limited smoke plums, reflective surfaces, etc. There are certain codes that require more robust insulation standards for residential uses around the airport. The City has worked with the Port to review applicants that are building close to the airport. Mike said that it was his understanding that there is nothing that shows that none of the noise contours would require additional noise insulation. Debbie said that no developments are within the 65 DNL, but there are buildings within the 60 DNL as well as the 55 DNL. The City has implemented these code requirements in the past and continues to do so. Bob asked if the 65 DNL is the same as what is at PDX. Steve said that there are no incompatible land uses within the 65 DNL contour. Mike said that he wants to further clarify that the City is implementing things that are not federally mandated. Debbie said that it is done on a case by case basis.

#### Noise Science Technology

These suggestions would look at the possibility of noise science technologies that could potentially reduce noise. Cathy asked if all these things on the list will be examined as part of the working group's analysis and recommendation. Fred said that the radar will not be looked at because the FAA stated that it will not be implementing radar at HIO, so that one is off the list. Brooke clarified that everything on the list will be looked at. If it is not included in the recommendation package, there will be an explanation of why it was not included.

## Legal

Fred said that this is something that will require a lot work with the Port's legal staff to see if these are feasible options. Ken stated that all the businesses have binding contracts with the Port, so that will be a difficult challenge as well.

### PUBLIC COMMENT ON THE NOISE SUBCOMMITTEE WORK:

Obie Hoodman who owns property at the end of the north-south runway provided testimony that they have tried to work with the Port in a friendly manner, but they are not responding. He feels that the Port is not interested in talking to people and that the City should have developed the airport by themselves. Property values are not good around the airport. He stated concern about the pattern that will be used for the new runway if it built. He wanted to know where the big jets would go. He feels that the little planes aren't the problem, it's the larger ones. He stated that the value of homes is decreasing. He also wanted to know how the homes under the flight path will be protected from a plane crashing.

Art Dummer read letter that was sent to Renee Dowlin as part of the Environmental Assessment for the parallel runway. He said he feels that the Port is stealing the property value by expanding the airport.

Miki Barnes testified that the fly-in/BBQ recommendation under the communications section was of concern to her. She knows people that live next to the Starks-Twin Oaks airport who are pummeled by the aircraft for their monthly breakfasts. She said that the best way to deal with aircraft noise is to not have them fly there at all. Tell them to drive their car, walk or ride their bike. Ken responded that the Port has long-term contracts with all of their tenants, so not telling them to fly their planes would not be appropriate. She said she feels the community is paying with their quality of life. She feels the port is negligent in signing these long contracts without public input.

Blaine Ackley lives on the east side of the airport. He also feels that the noise and property values are of concern as stated by others. He stated there was a study that was done in 2006, a meta-analysis of airport noise and property values. Property values go down with every decibel noise of .50. Every time you go above that, your property value is going to go down. It is documented with research. In his particular case, he is concerned about the prevailing NW winds as then the airplanes come over his home on approach. He said they also come over and circle and as they do that, they power down. As they power down, they backfire. It is noisy and it is spewing lead into the air. Lead is dangerous and there is no safe level of lead. If it could be addressed, that would help their neighborhood a lot.

### *HIO Parallel Runway Supplemental Update*

Renee Dowlin gave a quick update on the supplemental EA for the airport. There was a hearing and a public comment period. The public comment period is now closed. Mike asked what the timeline is looking like. Renee said that there is not a definitive timeline. Steve said that the construction season will not occur this construction season. Rudy asked if the Port was calculating what the cost will be of the delay in being able to actually build the parallel runway.

Steve answered that the Port has not calculated the full cost of the construction delay. The Port can provide the cost of the Supplemental Environmental Assessment study to the HARE committee. Additional construction costs related to project delays will not be known until a new construction project is bid in the future, and then compared to the original runway construction contract from 2011.

#### PUBLIC COMMENT

Jeff Lewis is a retired traffic controller. He was a whistleblower and is retired, but not by choice. He feels the working group is going in the wrong direction. The issue is the importation of flight training students and flight training operations, spewing lead. This is really about providing meaningful public involvement. People have impact from the noise and he feels the committee isn't doing anything to deal with the problem. He feels there can be a quality co-existence between the neighbors who chose to live here and the pilots need it. The airport putting in a third runway is not needed. The number of operations is what it was in 1998. This will be giving a handout to airports that don't need it. He felt committee member Bob Braze had a good point about the signs. Put the signs at the gates. Put it on a piece of paper that pilots will put in their operating book. The tower can be very involved in helping to coordinate. The FAA has a noise ombudsman in DC that could be a resource. He thinks Hillsboro could have an airport that serves the community without having so much impact.

Jim Lubischer provided a summary of a study that was done. The submitted study was done with fetal rat cells. The lead reduced the amount of brain cells. Research is showing how neurotoxic this mineral is. He encouraged HARE to realize that the children of Hillsboro and Washington County are subjected to lead poisoning by these planes. He said he was fairly confident that the City of Hillsboro has the police power to regulate operations for the health and safety if they are nondiscriminatory regulations. He questioned why the Port of Portland or the City of Hillsboro doesn't prohibit operations at HIO by aircraft that use leaded fuel. He suggested that the HARE recommend to the City that they include a lead disclosure form in their pre-application meetings. He also asked if the HARE would consider recommending that relators include a lead disclosure form in their potential client information. It would include information to buyers on the hours of operation, flight paths, include in detail the number of operations from flight training operations and the patterns for the flight training operations. He also asked if the City or the Port will be giving their analysis of the previously submitted SeaAir case to the HARE. He also asked if there was any way for the public to know the security requirements in place for Hillsboro Airport for aircraft under 12,000 lbs.

Ruth Warren stated that she feels there is an error in the executive summary provided in the meeting packet. The summary says there is a limited number, but she feels it is greater. The noise monitor by her house is buried in trees by a three story condo. She wants to know what the readings are from those noise monitors. She also has issues with flight training and engine run-ups. She wants to know why the run-ups be done inside like they are at PDX. Her house has triple paned windows, extra insulation and she still has to sometimes wear ear plugs or turn up the television. She wants to know what will be done for her. She thinks the Port is

overstepping its boundaries. She has lived in her home for 14 years. The City approved that subdivision and now the Port is saying that she lives there so she has to deal with it.

Patrick Dunn thanked Fred and the noise working group for their work. There was some testimony that the major issue is helicopters and not propeller aircraft. That is not true for his neighborhood in Orenco Station. The multi-engine aircraft with evening and late night activity are the biggest issues for his neighborhood.

Miki Barnes testified that she was awakened this morning at 5:30 by an aircraft. Even if it is not overhead, there is still a drone of aircraft in the distance. She calls the noise management office at the Port and they tell her there isn't anything that they can do. The City of Hillsboro protects the downtown core and move it to other areas outside the Port. She requests that the dedicated flight training operations be discontinued within 20 miles of the airport. She said that the Port claims that they are not getting any noise complaints, but she has talked to people who don't bother to complain. She feels that the noise office is ineffective and it is inappropriate to turn an entire community to a flight training area.

#### CONCLUSION

Mike said that he heard a few things tonight that could potentially be addressed. The cutting of the engine mentioned may be the Hillsboro Aviation students practicing an engine failure. He suggested that talking with Hillsboro Aviation about where their students can do that procedure may be helpful. The second thing would be to talk with Hillsboro Aviation about slowing phasing in new Cessna aircraft that run on diesel instead of leaded fuel as they begin to replace aircraft.

Henry moved to conclude the meeting. Bob Braze seconded concluding the meeting. Everyone approved. The meeting concluded at 7:38 p.m.

## Public Comment Response

### Airport Operations

#### Comment/Question

He stated concern about the pattern that will be used for the new runway if it built. He wanted to know where the big jets would go. He also wanted to know how the homes under the flight path will be protected from a plane crashing (Obie Hoodman).

In his particular case, he is concerned about the prevailing NW winds as then the airplanes come over his home on approach. He said they also come over and circle and as they do that, they power down. As they power down, they backfire. It is noisy and it is spewing lead into the air. Lead is dangerous and there is no safe level of lead. If it could be addressed, that would help their neighborhood a lot (Blaine Ackley)

He also asked if the City or the Port will be giving their analysis of the previously submitted SeaAir case to the HARE (Jim Lubischer).

She also has issues with flight training and engine run-ups. She wants to know why the run-ups be done inside like they are at PDX (Ruth Warren)

Miki Barnes testified that she was awakened this morning at 5:30 by an aircraft. Even if it is not overhead, there is still a drone of aircraft in the distance. She calls the noise management office at the Port and they tell her there isn't anything that they can do. The City of Hillsboro protects the downtown core and move it to other areas outside the Port. She requests that the dedicated flight training operations be discontinued within 20 miles of the airport (Miki Barnes).

#### Answers

The flight paths for aircraft using the parallel runway are laid out in the 2010 Parallel Runway Environmental Assessment. The City of Hillsboro's Airport Safety and Compatibility Overlay (ASCO) zoning ordinance was developed to address the concern regarding safety of properties surrounding Hillsboro Airport.

Usage of 100LL aviation fuel in aircraft is allowed and approved by both the FAA and the EPA. The Port of Portland cannot restrict the sale or usage of this type of fuel. Air quality modeling for the Hillsboro Airport, and surrounding areas, show lead emissions from aviation fuel to be well below the EPA standard of .15 micrograms/cubic meter. In addition, the Oregon DEQ has installed an air quality monitoring station in Hillsboro to further quantify the air quality in Hillsboro. The Hillsboro Airport Issues Roundtable Lead Discussion Subcommittee is currently exploring this issue. They will provide regular reports to the larger HARE committee on their status.

The Port's Legal Department has provided the attached memo to address questions brought forward regarding the Port and City's authority to control operations, specifically addressing the *SeaAir* case. There are a tremendous number of court cases about airport restrictions. These



cases reflect the considerable amount of litigation that has resulted whenever an airport has tried to impose a restriction on aircraft operations. In reading these cases, it is critically important to determine whether the case was decided before 1990 (when ANCA was enacted and federal law effectively prevented new restrictions) and whether the case is interpreting the U.S. Constitution, federal law or FAA regulations. Since the Port must comply with all three, cases that address only one of these sources of law are only marginally relevant to the Hillsboro Airport.

The US Constitution restricts the ability of state and local governments to interfere with interstate commerce, which includes interstate air traffic. Federal law and FAA regulations are more stringent than these constitutional limitations.

In addition to complying with the U.S. Constitution, federal law and FAA regulations, the Port cannot impose any proposed restriction without complying with federal grant assurances. Grant assurances are contractual commitments, mandated by federal law, which the Port makes to the federal government in connection with its annual receipt of federal grant funds. Grant assurance number 22 requires that the Hillsboro Airport be made available for “public use *on reasonable terms and without unjust discrimination* to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” (*Emphasis added*) If the Port were to restrict operations, it could not do so in a way that either unreasonably restricted the use of the airport or unjustly discriminated against certain users. It would be enormously difficult to prove (and subject to legal challenge) that a restriction on access to the Hillsboro Airport is both reasonable and not unjustly discriminatory. Since the law changed in 1990, the FAA has never found that a restriction meets this standard.

*SeaAir NY, Inc. v. City of New York, et al* is a 2001 case from the U.S. Court of Appeals serving New York. This case concerned a restriction that the City of New York imposed on sightseeing tour operators who used the City’s 23rd Street Seaplane Base. There are three legal factors that make this case unique.

First, the operators only conducted sightseeing tours so the Court concluded that the normal Constitutional limitations on the authority of airports to impose restrictions did not apply – the operators did not travel from one airport to another but operated roundtrip from the same airport without landing so they were not considered to be operating in “interstate commerce,” which is the minimum requirement for the Constitutional requirements to apply.

Second, the City of New York did not receive federal grants so the grant assurances did not apply. Third, since neither the Constitutional limitations nor the grant assurances applied, the Court did not have to decide whether ANCA applied. The case does not apply to airports where federal law, FAA regulations or the grant assurances apply, such as the Airport.

The principle that the Port and the City have the legal authority to regulate operations for the purpose of reducing noise based on the *SeaAir* case does not apply to Hillsboro Airport. First,

many users of the Hillsboro Airport do, in fact, operate in interstate commerce (i.e., they fly from Hillsboro Airport to another airport outside Oregon). Therefore, the Constitutional limits apply here. Second, the Port has taken federal grants so the grant assurance requirements mean that any restriction at Hillsboro Airport must be reasonable, nonarbitrary and not unjustly discriminatory. Third, since the Port is grant obligated, ANCA applies and the Port must follow the process mandated by that law.

The comment regarding run ups was included in public testimony for the Supplemental Environmental Assessment for the parallel runway at Hillsboro Airport. Once the FAA issues their Record of Decision (ROD), the answers to these comments will be available.

The Port of Portland does not have the authority to dictate what types of aircraft use the airport nor whether or not flight training activity can occur. Grant Assurances from the FAA prohibit an airport from discriminating against different types of aircraft operations, or different types of aviation businesses. The Port understands that flight training operations have an impact on neighbors that live near the airport. The Port manages an extensive noise management program (Fly Friendly) for HIO in an effort to minimize noise impacts to surrounding communities. In support of this, the Port's Noise Management Team meets with pilots, flight instructors, and flight students, on an ongoing basis to share the Port's Fly Friendly program to ensure that the impacts to the surrounding community are minimized to the extent possible. In addition, Port staff frequently meets with airport businesses to provide them community feedback on how their aircraft operations are perceived by the community.

The noise working group will be looking at recommendations on how community noise issues can be addressed. Flight training paths are one of the things that the committee could choose to explore as part of their recommendation package to the larger HARE committee.

### **HARE Subcommittee Work**

#### Comment/Question

He feels the working group is going in the wrong direction. The issue is the importation of flight training students and flight training operations, spewing lead. This is really about providing meaningful public involvement. People have impact from the noise and he feels the committee isn't doing anything to deal with the problem (Jeff Lewis).

#### Answer

The noise working group is taking all community input into their recommendation to be presented to the larger HARE committee. A newly formed committee will be looking at the concerns about lead that have been presented by different members of the community. The subcommittee will be putting together a list of resources for community members to have related to the issue.

## **Noise Management Hotline**

### Comment/Question

The noise monitor by her house is buried in trees by a three story condo. She wants to know what the readings are from those noise monitors. Her house has triple paned windows, extra insulation and she still has to sometimes wear ear plugs or turn up the television. She wants to know what will be done for her. She thinks the Port is overstepping its boundaries. She has lived in her home for 14 years. The City approved that subdivision and now the Port is saying that she lives there so she has to deal with it.

(Ruth Warren)

### Answer

This comment was included in public testimony for the Supplemental Environmental Assessment for the parallel runway at Hillsboro Airport. Once the FAA issues their Record of Decision (ROD), answers to these comments will be available.

## **Lead Emissions and Use of Leaded Fuel at Hillsboro Airport**

### Comment/Question

He questioned why the Port of Portland or the City of Hillsboro doesn't prohibit operations at HIO by aircraft that use leaded fuel. He suggested that the HARE recommend to the City that they include a lead disclosure form in their pre-application meetings. He also asked if the HARE would consider recommending that relators include a lead disclosure form in their potential client information. It would include information to buyers on the hours of operation, flight paths, include in detail the number of operations from flight training operations and the patterns for the flight training operations. (Jim Lubischer)

### Answer

The use of leaded fuel by aircraft is not within the control of the Port of Portland. There is no approved and available alternative for piston engine aircraft which require leaded fuel for safe flight operations. The FAA has recently created an office to oversee the research and development of an alternative to leaded fuel. Where possible, the Port will continue to monitor, engage with, and participate in the efforts of national organizations as they address the issue of lead and aviation fuel.

The City of Hillsboro will have to provide answers on whether or not they would require disclosure forms related to lead for people purchasing homes near the airport.

## **Security at Hillsboro Airport**

### Comment/Question

He also asked if there was any way for the public to know the security requirements in place for Hillsboro Airport for aircraft under 12,000 lbs. (Jim Lubsicher)

### Answer

For security purposes, the Port of Portland does not comment on specific security measures. Hillsboro Airport meets or exceeds all standards for airport physical security for a

General Aviation airport. The Transportation Security Administration has information on their website about General Aviation security which can be found here:  
<http://www.tsa.gov/stakeholders/general-aviation>

November 20, 2013

## RESPONSE TO QUESTIONS REGARDING NOISE RESTRICTIONS

### *Summary*

This memo is intended to inform Port stakeholders and staff on questions surrounding the City of Hillsboro (“City”) and the Port of Portland’s (“Port”) legal authority to impose noise mitigating restrictions on air operations at the Hillsboro Airport (“Airport”).

### *Questions and Responses*

The Port has prepared the following questions and responses to address questions raised by stakeholders in various venues.

#### **1. Does the Port or the City have the legal authority to control where aircraft flies?**

No, neither the City nor the Port has authority over flights. The Federal Aviation Administration (FAA) has exclusive legal authority to regulate the use of airspace and air commerce within the United States. 49 U.S.C.A § 40103(a)(1); *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944); *American Airlines, Inc. v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968) *cert. denied* 393 U.S. 1017. No municipality or airport proprietor can control aircraft (which includes helicopters) in flight. Additionally, any attempt by a non-proprietor municipality like the City to regulate the use of taxiways and runways is preempted by federal law. *City of Burbank v. Lockheed Air Terminal*, 411 US 624, 93 S Ct 1854, 36 L Ed 2d 547 (1973); *Burbank-Glendale-Pasadena Airport Authority v. City of Los Angeles*, 979 F2d 1338 (9<sup>th</sup> Cir. 1992).

#### **2. Does the Port or City have the legal authority to impose curfews or other restrictions on flight operations?**

The City has no legal authority to impose curfews or place other restrictions on flight operations or, more generally, on the operation of aircraft at the Hillsboro Airport. Only airport proprietors have legal authority to restrict airport operations. The Port, as the airport proprietor, does have limited authority to impose such restrictions but this authority is highly regulated by federal law. Federal law is so stringent that no airport has successfully imposed restrictions on the current generation of aircraft since the applicable federal law was enacted 23 years ago

The Airport Noise and Capacity Act of 1990 (ANCA) and FAA regulations known as “FAR Part 161,” impose stringent limitations on the legal authority of airports to implement restrictions or rules on aircraft operations. ANCA and FAR Part 161 apply to any regulation, lease provision, or other mandatory restriction or requirement that has the effect of controlling access to, or noise from, current generation aircraft. (There are some

exceptions for very old aircraft – those built in the 1970s and before – of which there are few in service today.) Federal law and FAA regulations impose an onerous, costly, and time-consuming review process and require FAA approval for any restriction which has the effect of restricting current generation aircraft. It would be unlawful for the Port to impose a restriction on use of Hillsboro Airport without complying with federal law and FAA regulations.

There are also constitutional limitations on the ability of airport proprietors to restrict operations. (In short, the US Constitution restricts the ability of state and local governments to interfere with interstate commerce, which includes interstate air traffic.) Federal law and FAA regulations are more stringent than these constitutional limitations. It is therefore inaccurate to state that if a restriction might be deemed constitutional then it would also be legally permissible. There are many more layers of regulation besides the constitutionality of a restriction.

In addition to complying with the U.S. Constitution, federal law and FAA regulations, the Port cannot impose any proposed restriction without complying with federal grant assurances. (Grant assurances are contractual commitments, mandated by federal law, which the Port makes to the federal government in connection with its annual receipt of federal grant funds.) Grant assurance number 22 requires that the Hillsboro Airport be made available for “public use *on reasonable terms and without unjust discrimination* to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” (Emphasis added.) If the Port were to restrict operations, it could not do so in a way that either unreasonably restricted the use of the airport or unjustly discriminated against certain users. It would be enormously difficult to prove (and subject to legal challenge) that a restriction on access to the Hillsboro Airport is both reasonable and not unjustly discriminatory. Since the law changed in 1990, the FAA has never found that a restriction meets this standard.

One requirement that is common to the Constitution, federal law, FAA regulations and grant assurances is that the Port cannot implement any restriction without first considering the impact on both residents and airport users. In order to prove that a restriction is legally permissible, the Port would have to prove that its positive benefits outweigh the adverse impacts to anyone who could be affected by the restriction. Therefore, the Port would have to weigh, for example, the effects on aircraft operators against any benefits to nearby residents.

One final important factor that must be considered is the extraordinary cost associated with attempting lawfully to impose a restriction. Not only would be the required process be costly (some estimates put it at several million dollars) but the Port would have to anticipate litigation. Virtually every airport that has tried to impose a restriction on operations in recent years has faced vigorous legal challenges which themselves have cost millions to defend. The Port would have a difficult time justifying this cost as being in the general public interest.

### **3. Can the Port or City prohibit helicopter training?**

For the same reasons explained above, the City cannot lawfully restrict or prohibit helicopter training. ANCA and Part 161 would limit the Port's legal authority to impose restrictions on helicopters just as that law and those regulations limit the Port's authority over restrictions on fixed-wing aircraft. *Letter from James Erickson, FAA Director of Environment and Energy to Glenn Rizner, Helicopter Association International Vice President (July 7, 1997- "The plain statutory language of ANCA, Part 161, and other relevant data support applicability of ANCA and Part 161 to helicopters.")* ANCA and Part 161 require the Port to follow the same review process for restrictions on fixed wing aircraft and helicopters, with the exception that federal approval of restrictions on helicopters is not required today. Last year, the FAA proposed new regulations – which it may finalize at any time – to require FAA approval of helicopter restrictions just as is required for the latest generation fixed wing aircraft.

FAA policy does allow limited restrictions on flight training if such restrictions are necessary for safety (FAA Order 5190.6A § 4-8(a)(2)). If the Port were to impose such a restriction, it would need to demonstrate that the restriction is no more stringent than required to address a specific safety concern. The FAA has allowed airports to impose helicopter safety restrictions in only very limited circumstances. Noise impacts are not considered to be a valid safety justification for a limit on training.

#### **4. Can users of the airport voluntarily agree to certain flight restrictions?**

Yes, the users of the airport can voluntarily agree to restrict operations. Voluntary restrictions are quite common at airports around the country. To be effective, they should be signed by all operators affected by the restriction. Of course, the Port cannot take any action (such as, for example, incorporating the restriction into a lease) that would have the effect of making the restriction mandatory without complying with the ANCA and Part 161 requirements described in detail above.

#### **5. How have other airports imposed restrictions on operations?**

There are a number of airports throughout the country that had restrictions in place before enactment of ANCA in 1990. ANCA provided that those restrictions were "grandfathered" and not subject to FAA approval after ANCA was enacted. Since ANCA was enacted, only one airport in the nation has imposed a new noise or access restriction. (That was a restriction on the old generation "stage 2" aircraft that have largely been retired from service in the United States.) With this one exception, when people cite to the many restrictions at airports around the country, it is important to recognize that all of these restrictions were imposed before ANCA was enacted in 1990, by which Congress intentionally made it extraordinarily difficult to impose new restrictions. It is inaccurate to state or suggest that the restrictions at these "grandfathered" airports means that the Port is free to unilaterally impose similar restriction at the Airport.

## **6. Are the court cases identified by members of the public applicable to the Hillsboro Airport?**

There are a tremendous number of court cases about airport restrictions. These cases reflect the considerable amount of litigation that has resulted whenever an airport has tried to impose a restriction on aircraft operations. In reading these cases, it is critically important to determine whether the case was decided before 1990 (when ANCA was enacted and federal law effectively prevented new restrictions) and whether the case is interpreting the U.S. Constitution, federal law or FAA regulations. Since the Port must comply with all three, cases that address only one of these sources of law are only marginally relevant to the Hillsboro Airport.

The objections appear to stem in part from reliance on a certain case, *SeaAir NY, Inc. v. City of New York, et al*, 250 F.3d 183 (2d. Cir. 2001), a 2001 case from the U.S. Court of Appeals serving New York. This case concerned a restriction that the City of New York imposed on sightseeing tour operators who used the City's 23<sup>rd</sup> Street Seaplane Base. There are three legal factors that make this case unique. First, the operators only conducted sightseeing tours so the Court concluded that the normal Constitutional limitations on the authority of airports to impose restrictions did not apply – the operators did not travel from one airport to another but operated roundtrip from the same airport without landing so they were not considered to be operating in “interstate commerce,” which is the minimum requirement for the Constitutional requirements to apply. Second, the City of New York did not receive federal grants so the grant assurances (discussed above) did not apply. Third, since neither the Constitutional limitations nor the grant assurances applied, the Court did not have to decide whether ANCA applied. The case does not apply to airports where federal law, FAA regulations or the grant assurances apply, such as the Airport.

Those arguing in favor of Port or City control over flight operations maintain that this case stands for the principle that the Port and the City have the legal authority to regulate operations for the purpose of reducing noise. But this position fails to recognize that the *SeaAir* case does not apply here. First, the users of the Hillsboro Airport do, in fact, operate in interstate commerce (i.e., they fly from Hillsboro Airport to another airport outside Oregon). Therefore, the Constitutional limits apply here. Second, the Port has taken federal grants so the grant assurance requirements mean that that any restriction at Hillsboro Airport must be reasonable, nonarbitrary and not unjustly discriminatory. Third, since the Port is grant obligated, ANCA applies and the Port must follow the process mandated by that law.

### ***Conclusion***

As explained herein, neither the Port nor the City has any authority over aircraft operations in the air. The City has no legal authority to regulate aircraft on the ground at the Hillsboro Airport. The Port, as the airport proprietor, could impose restrictions only



if it could satisfy the numerous limitations on its authority imposed by the U.S. Constitution, by federal law (ANCA, among other statutes), FAA regulation (Part 161) and the contractual grant assurances. It would be extraordinarily burdensome, time consuming and expensive for the Port even to try to comply with all of these requirements. As a demonstration of the difficulty of lawfully imposing a restriction, since the limitations on airports' authority were strengthened in 1990, only one airport in the nation has successfully navigated this process.