

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
STATE OF CALIFORNIA

In the Matter of the Noise Variance  
Application of:

Case No. L2010041216

CITY OF LOS ANGELES; LOS ANGELES  
WORLD AIRPORTS (LOS ANGELES  
INTERNATIONAL AIRPORT),

Applicant.

**PROPOSED DECISION**

This matter came regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on December 1, 2010, in Los Angeles, California.

Raiyn Bain, Attorney at Law, represented Department of Transportation, Division of Aeronautics (Department).

Rosario Tobias, Deputy City Attorney, represented City of Los Angeles, Department of Airports, also known as Los Angeles World Airports (Airport Authority).

Thomas J. Faughnan, Principal Deputy County Counsel, County of Los Angeles, represented Intervenor County of Los Angeles (County).

Barbara E. Lichman, Attorney at Law, represented Intervenor City of Inglewood (Inglewood).

Gabe Ross, Attorney at Law, represented Intervenor City of El Segundo (El Segundo.)

Intervenor Mike Stevens (Stevens), a person who resides within the noise impact area of the Los Angeles International Airport (Airport or LAX), represented himself.

Airport Authority seeks a variance pursuant to California Code of Regulations (CCR), title 21, section 5051, in order to continue its operation of the Airport at a level that generates in excess of the regulatory-set level of aircraft noise. Airport Authority, County, El Segundo, and Inglewood stipulated that issuance of the variance, subject to agreed upon conditions, is in the public interest. They also agreed on the specific conditions of the variance. Stevens did not join in the stipulations, and sought a hearing.

On April 19, 2010, the Department issued the Notice of Informal Hearing and Statement of Issues (Statement of Issues). Stevens thereafter filed a statement containing issues that he sought to address at a full evidentiary hearing. The Airport Authority, County, El Segundo, and Inglewood filed objections to Stevens' request, primarily on relevancy grounds. On October 4, 2010, the Administrative Law Judge sustained the objections and concluded that the matter could proceed to an informal hearing pursuant to Government Code<sup>1</sup> section 11445.20, subdivision (a), as Stevens had not shown that there were disputed issues of material fact to warrant a full evidentiary hearing.

Documentary evidence was received at the hearing, and Stevens and other individuals who reside near the Airport commented on the proposed stipulations, the proposed conditions, and the impact of Airport noise on their daily lives. The matter was submitted for decision on December 1, 2010.

### FACTUAL FINDINGS

1. Airport Authority filed a request for a noise variance pursuant to CCR, title 21, section 5051, on May 21, 2008. The variance is required because the Airport generates noise that impacts its neighbors.<sup>2</sup> On September 24, 2008, Stevens requested a hearing on the Airport Authority's application.

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<sup>1</sup> All further statutory references are to the Government Code.

<sup>2</sup>The regulations, the California Noise Standards promulgated by the Department, require a noise variance before an airport with a "noise impact area" can operate. (CCR, tit. 21, § 5012.) The noise impact area is defined in terms of a community noise equivalent level (CNEL) of 65 decibels (dB). (*Ibid.*) The CNEL is derived from the average of all noise events over a 24-hour period, where greater weight is given to noise made during evening and nighttime periods. (CCR, tit. 21, § 5001, subd. (f).) If points around an airport where the 65 dB CNEL level is achieved on an annualized basis are joined, the resulting outline is the "noise impact boundary." (CCR, tit. 21, § 5001, subd. (l).) The "noise impact area" is the area within the noise impact boundary that is composed of incompatible land uses. (CCR, tit. 21, § 5001, subd. (k).) Incompatible land uses are defined as residences, schools, hospitals and convalescent homes, churches, synagogues, temples, and other places of worship, which the airport proprietor does not own or have an avigation easement for noise over; or which do not contain noise insulation or acceptable interior noise levels as defined in the regulations. (CCR, tit. 21, § 5014.)

2. The Airport is operating pursuant to a stipulated variance, which became effective June 21, 2005.

3. On August 31, 2009, the Airport Authority requested an informal hearing pursuant to sections 11445.10 et seq.

4. On April 19, 2010, the Department granted the Airport Authority's request, and on April 19, 2010, issued the Statement of Issues.

5. Stevens thereafter filed a statement containing issues that he sought to address at a full evidentiary hearing. The Airport Authority, County, El Segundo, and Inglewood filed objections to Stevens' request for a full evidentiary hearing, primarily on relevancy grounds, and reaffirmed their support for an informal hearing.

6. On October 4, 2010, the Administrative Law Judge denied Stevens' request, and concluded that the matter could proceed to an informal hearing pursuant to section 11445.10 et seq., as Stevens had not shown that there were disputed issues of material fact to warrant a full evidentiary hearing.

7. As stipulated by the parties, granting the noise variance, as conditioned, is in the public interest.

8. At the hearing, Stevens and other individuals who reside near the Airport, Joyce Alexander, Annie Franklin, Lawrence Haley, Al Jenkins, Pearly Johnson, and Marjorie Presley, presented oral comments on the proposed stipulations, the proposed conditions, and the impact of Airport noise on their daily lives, pursuant to section 11445.40.

#### LEGAL CONCLUSIONS

1. In reviewing variance applications, the Department must be guided by the underlying policy that the proprietor of each existing airport having a noise impact area is required to develop and implement programs to reduce the noise impact area of the airport to an acceptable degree in an orderly manner over a reasonable period of time. (CCR, tit. 21, § 5050.)

2. The Airport Authority has a number of options to reduce or eliminate the size of the noise impact area, including those listed in CCR, title 21, section 5037. For instance, it may encourage use of less noisy aircraft or departure flight paths and procedures to minimize noise in residential areas. It may also convert incompatible land uses to compatible ones through rezoning, acquisition of avigation easements for noise, application of acoustical insulation, or acquisition of property.

3. The Department may grant a variance if to do so would be in the public interest. (CCR, tit. 21, § 5053.). In making this public interest determination, the Department must consider the following: (a) the economic and technological feasibility of complying with the noise standards set by the regulations; (b) the noise impact should the variance be granted; (c) the value to the public of the services for which the variance is sought; and (d) whether the airport proprietor is taking good faith measures to the best of its ability to achieve the airport noise standards. (CCR, tit. 21, § 5053.) In this case, it is in the public interest to grant the noise variance, by reason of factual finding numbers 1 through 8.

### ORDER

1. The variance granted herein shall be for a period of three years from the effective date of this order.

2. LAX shall continue to implement its Aircraft Noise Mitigation Program (ANMP). LAX, with the assistance of the affected jurisdictions, 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 State Noise Standards. LAX shall use its best efforts to complete the acoustic treatment portion of the total ANMP for all affected jurisdictions within nine years from the effective date of this decision, although local programs may progress more or less quickly, based on the capabilities of those affected jurisdictions. LAX shall use its best efforts to continue to streamline its supplemental funding program application processes in order to accelerate the disbursement of funds to local jurisdictions participating in the program.

3. LAX, with the assistance of the affected local jurisdictions, shall prepare an annual update of the numbers and tabular information within the ANMP that show the total annual funding available to each jurisdiction and the annual performance of each jurisdiction in its efforts to achieve the mitigation of incompatible land uses. In the event that a jurisdiction is unable or unwilling to assist LAX in updating this information, LAX shall proceed using the best information available and shall document the use of estimated information in the update. LAX shall include this updated information with its second quarter "quarterly report" information that it sends to the County of Los Angeles pursuant to the reporting requirements within the State Noise Standards.

4. LAX shall continue in full force and effect, the implementation and enforcement of the following existing noise abatement policies<sup>3</sup> to the extent of its authority:

- a. No turns before the shoreline;
- b. Over-ocean operations between 0000 and 0630, weather permitting;
- c. Helicopter noise mitigation policies;
- d. Preferential runway use policies;
- e. Southwest buffer zone policies; and
- f. Maintenance run-up curfew.

5. To facilitate compliance with its "no turns before the shoreline" policy, LAX shall use its best efforts to reduce the number of early turns by continuing to work with the Federal Aviation Administration (FAA) and pilots to address the various causes for early turns. These efforts shall include, without limitation, continuing to consider emerging technologies that assist with the precise definition of the shoreline that assist pilots in maintaining a straight bearing upon departure, and that otherwise prevent early turns.

6. Within five years following the effective date of this stipulated variance, LAX shall design the two Ground Run-Up Enclosures (GREs) provided for on page 2-95 of the June 2003 LAX Master Plan Addendum.

7. LAX shall undertake an analysis of the existing Preferential Runway Use Policy to determine conditions related to compliance with the policy, how the policy is implemented, and means for improving compliance. LAX will consult with operators, the FAA, and the LAX/Community Noise Roundtable as necessary in performing this analysis, and will draft a report which will include any recommendations for actions that may lead to better policy compliance and/or implementation.

8. Within 45 days after the end of the calendar quarter, LAX shall provide the information to the County of Los Angeles that the County needs to prepare its Quarterly Reports of Noise Monitoring. LAX shall include a brief report regarding the implementation of each of the conditions to this variance decision with the noise monitoring information

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<sup>3</sup> These policies are articulated in the section of the LAX Rules and Regulations entitled "Aircraft Noise Abatement Operating Procedures and Restrictions" dated November 2008.

forwarded each quarter. With its second calendar quarter information, LAX shall additionally include the information as described in condition 3 above.

9. Concurrent with its submittal to Caltrans of any proposed new or modified noise monitoring plan or system pursuant to CCR, title 21, section 5033, LAX shall provide the County with a copy of its submittal for review and consideration. LAX shall cooperate with the County in any reasonable request of the County for review or audit of LAX's noise monitoring system for compliance with the requirements of the State Noise Standards consistent with section 21669.4, subdivision (b), of the California Public Utilities Code.

10. LAX will include in each quarterly report tabular data and graphical illustrations describing and comparing the level and type of usage for each runway at LAX during the quarter. Specifically, the report shall include: (a) the average number of arrivals and departures conducted daily in each direction on each runway during all hours and during nighttime hours (10 p.m.-7 a.m.); and (b) percentage of arrivals and departures conducted on each runway in each direction during all hours and nighttime hours (10 p.m.-7 a.m.). When and if such data becomes available, LAX shall also include in its quarterly reports the average number of arrivals and departures conducted daily by aircraft type (e.g., Boeing 747) or similar classification on each runway during all hours and during nighttime hours (10 p.m.-7 a.m.). Data used to calculate the average numbers referenced above shall be retained for at least three years and shall be made available to the public upon request. LAX shall also provide the runway usage data contained in its quarterly reports to the FAA for the FAA's use in monitoring air traffic runway usage that could potentially result in a shift in noise.

11. LAX shall continue to conduct nightly monitoring with respect to its maintenance run-up curfew. LAX shall maintain records of its monitoring and enforcement activities. LAX shall include in each quarterly report information regarding monitoring and enforcement activities undertaken during the quarter. Specifically, the report shall include: (a) a brief description of LAX'S curfew monitoring efforts; (b) the time, date and location of each curfew violation as well as the company performing the maintenance run-up; and (c) follow-up and/or enforcement actions taken by LAX in response to curfew violations.

12. LAX shall take reasonable steps to ensure that the Airport's noise complaint hotline has the capability of providing a live answer as appropriate, and shall ensure that any complaints left as voicemail messages are retrieved and responded to appropriately in a timely manner.

13. LAX shall make available noise measurement data for the Airbus A380 and the Boeing 747-800 (when operations commence) at LAX.

14. This variance decision excuses LAX from meeting the requirement that there be no noise impact area based upon the airport noise standards identified in CCR, title 21, Section 5012 for the term of the variance. However, in the event that LAX violates any of the above terms or conditions, such conduct shall constitute a cause for the termination or further conditioning of this variance. Also, pursuant to Public Utilities Code sections 21699.2, subdivision (a), and 21669.4, subdivision (b), and CCR, title 21, section 5022, it is the function of the county wherein the airport is located to enforce the state noise regulations.

DATED: 12/23/00



SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings