

## Using Formal Agreements to Provide Certainty in Airport-Community Relations

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**Summary:** The siting of new airports and the expansion and redevelopment of existing airports has become a heated battleground in the United States. Community organizations have used the panoply of political and legal tools to halt or delay such projects for years. The result of such battles is not only a delay in airport projects but also a loss of the cooperative working relationship between an airport and its neighbors which can be legally and politically critical.

Airport proprietors recently have found that carefully negotiated intergovernmental agreements can provide tangible benefits to both communities and proprietors. They eliminate the political and legal uncertainties of complex airport projects and can provide economic benefits for the communities. The new Denver International Airport, for example, would never have been built without a complex series of intergovernmental agreements with the jurisdiction in which the new airport was to be located.

This paper explores the benefits of seeking early cooperation between airport proprietors and host communities and discusses the strategic issues which should be considered in negotiating such agreements.

### 1. INTRODUCTION

The siting of new airports and the expansion and redevelopment of existing air carrier airports has become one of the most contentious battlegrounds for infrastructure development in the United States in recent years. The combination of long-neglected capital development and expansion with a steady growth in both operations and enplanements has made airport capital projects particularly critical in the United States. At the same time, legal developments, increased sophistication, and growing hostility toward the environmental and social impacts of aircraft operations have made airport neighbors a credible threat to timely and cost-effective airport development. Though traditionally dismissed as "NIMBY" (not-in-by-back-yard) nuisances, airport neighbors increasingly have enlisted the support of general purpose local governments who can bring to bear both legal and political tools which can effectively delay or even halt airport development projects.

### 2. FACTORS LEADING TO AIRPORT-COMMUNITY DISPUTES

#### 2.1 Economic Benefits vs. Environmental Impacts

Several factors contribute to the adversarial relationship between

airport proprietors and their neighbors. Even among opponents to airport development,<sup>1</sup> there is no dispute that airports can be enormously successful engines for economic growth. Large hub airports like Dallas/Ft. Worth International or Chicago O'Hare can produce region-wide economic benefits which dwarf even the largest industrial or service-sector employers. For complex economic, political and environmental reasons, however, those economic benefits are rarely enjoyed proportionally by an

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<sup>1</sup> Opponents of airport development projects are only a loosely confederated group. While such groups in the United States frequently share experiences through specialized trade publications such as *Airport Noise Report*, there are only two national organizations which have focussed attention on airport development issues from a community perspective. The National Organization to Ensure a Sound-Controlled Environment (NOISE) represents local governments affected by airport noise and the National Airport Watch Group (NAWG) represents some local governments but primarily grassroots citizens organizations on the same issues. Neither organization has developed a national constituency to compare to those organized by the American Association of Airport Executives (AAAE) or the Airports Council International - North America (ACI-NA), the two principal airport industry groups.

airport's immediate neighbors. The adverse social and environmental impacts of large hub airports generally are concentrated in the airport's immediate vicinity as those are the areas which experience increased noise, air and water pollution, influx of transient labor, and disruption of existing community development patterns. This disparity can produce a sense of resentment by airport neighbors who may perceive that they are shouldering a disproportionate share of the cost of the region's economic prosperity. Although this resentment may not intensify to create a significant political force in opposition to existing airport operations (i.e., residents have chosen to live in the community adjacent to the airport, presumably aware of the impacts of the airport), it can become a driving political force when an airport proposes changes in operations or facilities which would have the effect of altering these expectations.

## 2.2 Federal and Local Government Roles in Airport Development

A second factor is a function of the United States political structure. By federal law, the control of aircraft operations lies exclusively within the jurisdiction of the Federal Aviation Administration (FAA). Where, how and when aircraft operate is federally controlled by a cradle-to-grave air traffic regulatory system. For historical as well as practical reasons, that regulatory system necessarily is responsive to concerns by air carriers, aircraft operators and airport proprietors and has little legal or institutional constituency from airport neighbors.

In contrast to the federal control over aircraft operations, the siting, development and expansion of airport facilities is a matter of local control and jurisdiction. The federal government steadfastly has resisted efforts to become involved in what it characterizes as intimately local decisions over when, where, how and by whom airport facilities should be built. Notwithstanding its refusal to assume jurisdictional *control* over airport development issues, the federal government is involved in airport development. The federal government provides funding, and, through contractual commitments, regulates airport operations at any federally-funded airport. (Virtually all commercial service airports in the United States are federally funded.) There is, nevertheless, no unified federal airport development plan in the United States. While the FAA issues annual plans for airport system development, those plans are little more than political statements of how the federal government proposes to allocate expenditure of federal grant funds. Ultimately, local airport proprietors retain both political and legal authority to decide when, how and where their facilities will be expanded; even funding decisions are largely a function of the political influence of the particular airport proprietor, and the proprietor of a large hub airport located in a politically influential area is more likely to receive federal funding than the proprietor of a small regional airport.

Federal law requires that all federally-funded airports operate as a closed fiscal system -- with few exceptions, all revenues generated at an airport must be expended for airport purposes and cannot be diverted to other local governmental functions. While some small cities provide a local tax subsidy for airport operations, virtually all large hub airports are fiscally independent of their local taxing authorities, and thereby further

insulated from their tax-paying neighbors.

The practical influence of federal funding should not be overemphasized. Although receipt of federal funding fundamentally defines the legal constraints under which an airport operates, federal funding provides only a small fraction of airport capital funding in the United States. (The new Denver International Airport, for example, received less than 20 percent of its capital funding from the federal government.) Even the limited federal funds available for airport construction, moreover, do not come from general federal tax revenue. Federal airport funds are derived from a so-called Airport Trust Fund, a federal budget category which consists of earmarked revenue from an excise tax on airline tickets.

A vast preponderance of funding for airport development comes from airport users -- passenger facility charges (a tax of up to \$3 imposed by an airport proprietor on each arriving or departing passenger), lease payments by airport tenants, and bond revenue.

## 2.3 Fiscal and Political Independence of Airport Proprietors

Finally, and perhaps most importantly, most of the larger hub airports in the United States are operated by entities which need not be politically responsive to their immediate neighbors. Many of the largest airports are operated by independently appointed authorities who are legally responsible only to their users and bondholders. Unlike general purpose local governments who constantly must balance the political, economic and fiscal concerns of their constituencies with the practicalities of operating a government, independent airport authorities have the narrow mission of ensuring that the airport operates as a cost-effective fiscal system for its customers: air carriers, other airport users and passengers. Many of the larger airports in the United States, including Dallas/Ft. Worth International, the three New York-area airports (Kennedy, LaGuardia and Newark), Seattle-Tacoma International, Boston Logan and the Washington, DC airports (Dulles International and National) fit into this mold.

Those large hub airports which are operated by a general purpose local government tend to be located either outside the municipality's jurisdictional boundaries or along the municipality's border, strategically sited so that adverse impacts from airport operations will affect neighbors rather than the municipality. The political attractiveness of such airport siting should be obvious: a municipality receives the economic benefits of the airport while shifting the costs to another jurisdiction. Most of the remaining large hub airports -- including Chicago O'Hare, Los Angeles International, San Francisco International, Cincinnati Northern Kentucky, St. Louis Lambert Field and Cleveland Hopkins -- fit into this mold.

These two models for the structuring of airport proprietors present obvious advantages for airport users and can offer limited insulation from the vagaries of local politics. Independent airport authorities or airports located outside or astride jurisdictional boundaries, however, face practical problems which have increased the leverage which airport neighbors have over airport development projects. Most large hub airports have to rely upon their host jurisdiction for the

delivery of essential public services -- from police and fire protection to traffic control, from road maintenance to public health inspections. Even more importantly, recent federal, state and local court decisions have affirmed that, notwithstanding federal involvement and not withstanding their independent status, airports must comply with their host jurisdiction's land use regulations. (In some states, state law specifically exempts airports from local regulation, but such laws are the exception rather than the rule.) Building and zoning codes and related local ordinances can have a significant influence on the location and manner of airport development projects.

For airport proprietors, the greatest disadvantage of this splintered system of local control is that they must seek the cooperation from the host or neighboring local government to obtain governmental approvals necessary for airport development projects. Not only does this present a practical problem for proprietors but it offers potentially belligerent airport neighbors with tremendous leverage to extract concessions from the airport much like local governments in the United States commonly seek from any other large industrial land owner. Most of the recent litigation over airport development projects has involved issues of local versus airport control over government regulatory functions.

### 3. INCENTIVES FOR NEIGHBORS TO OPPOSE AIRPORT DEVELOPMENT PROJECTS

These three factors conspire to provide powerful incentives for airport neighbors to be uncooperative -- at best -- or overtly hostile to airport expansion and development projects.

Until recently, most airport proprietors viewed neighbor hostility as an unpleasant but unavoidable element of planning for expansion of airport facilities. In the 1970s and 1980s, it was accepted as inevitable that construction of new runways, expansion of landside facilities or development of airport-related facilities would be greeted with hostility and often vigorous legal and political attacks by neighbors. In the short term, many airport proprietors have not chosen not to seek solutions to these problems because, even when these attacks have been successful, the cost to the airport proprietor generally was not viewed as substantial in the context of a multimillion dollar construction project.

Recent successes by airport opponents have changed the calculus for many airports. Increasingly, airport victories themselves have become costly, as the competitive environment and financial constraints for airport proprietors and air carriers have placed a premium on airports who can get projects built quickly and cost-effectively. Simply stated, an airport proprietor's ability to outspend or outlast its opponents is no longer a guarantee of success.

#### 3.1 Federal Efforts to Address Airport-Neighbor Animinities

In part as an effort to ameliorate the nagging problem of airport - community animinities, the federal government initiated a series of programs in the 1970s and 1980s designed to lessen the most

common and noxious impact of airport operations -- noise.<sup>2</sup>

The federal government adopted a two-prong approach. First, through its authority to license and regulate aircraft, the FAA imposed limitations on the amount of noise which aircraft could generate, by limiting operations first by Stage I and then by Stage II aircraft. (Stage II aircraft are due to be phased out of domestic operation in the United States by the year 2000.) Although the phase-out of these aircraft was not designed exclusively for noise mitigation purposes, the program has reduced significantly the number of people exposed to noise levels which the FAA has found to be unacceptable.<sup>3</sup>

The second prong took advantage of the FAA's fiscal leverage. The FAA created a land use compatibility planning process which encouraged airport proprietors to develop Noise Compatibility Programs, designed to reduce the prevalence of incompatible land uses in the vicinity of airports. The incentive to participate in the program was that federal grant funding would be made available for developing the plans and for implementing any FAA-approved measures to reduce incompatibility.

The FAA's Noise Compatibility Planning Program has enjoyed some limited success, particularly at smaller airports and at airports which previously had considerable concentrations of residential development in proximity to the airport. Most of the success has been attributable to the influx of federal funds which has allowed airports to buy off potentially hostile neighbors by sound-insulating or purchasing their homes. At large airports like Seattle-Tacoma or Dallas/Ft. Worth, the cost of acquisition and insulation programs alone has topped \$100 million.

Neither the phase-out of older, noisier aircraft nor the development of noise compatibility programs, however, dealt with the problems which airports face when planning for a substantial expansion of existing facilities.

Most recent airport expansion and development projects at large hub airports have shown that the FAA programs to have had very limited long-term value in reducing airport - community disputes. In fact, development of an airport's Noise

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<sup>2</sup> The federal government's involvement in reduction of airport noise was crucial because of the division of legal responsibility between airport proprietors and the federal government. While airport proprietors have the legal authority to control ground noise (i.e., maintenance activities, location of landside facilities), the federal government's exclusive authority over aircraft operations means that only the federal government has the authority to control where aircraft fly, through implementation of preferential flight tracks or runway usage programs, noise abatement departure profiles, or other operational measures. The FAA tries to be responsive to airport proprietors' concerns but guards vigilantly its legal authority to control aircraft operations.

<sup>3</sup> By law and policy, the FAA's position is that all land uses are compatible with an average annual day-night noise exposure level (DNL) of 65 dB or less.

Compatibility Program in some instances has had precisely the opposite effect as it has helped increase the technical and legal sophistication of airport neighbors and has led to expectations that the adverse impacts of airport operations would remain constant or decrease over time.

### 3.2 Case Studies of Airport-Community Hostility

The cost of these disputes has been enormous both in terms of the dollars spent in defending the proprietor in legal and political fora and in terms of the delays which such battles inevitably cause. Regrettably, however, such battles have been the norm rather than the exception in most major airport infrastructure projects since the 1980s. Several examples illustrate the severity of the problem.

#### 3.2.1. Dallas/Ft. Worth (Texas) International Airport

Dallas/Ft. Worth International Airport (D/FW) is the second busiest airport in the United States and one of the busiest in the world. Until this year's opening of the Denver International Airport, it was the last major air carrier airport built in the United States. When it was sited in the early 1970s, the airport planners wisely chose a rural site and acquired what was thought to be an excessive amount of property. The theory was that the airport would have enough property not only for current needs but for any projected expansion of facilities well into the 21st century.

In an ironic sense, D/FW Airport has been a victim of its own success. Although the landside facilities originally were designed for origination/destination traffic and not for the connecting traffic characteristic of the hub-and-spoke system, both the airside and landside facilities provided, until recently, plenty of capacity for the airport to serve as a hub for two of the largest air carriers in the United States (American Airlines and Delta Air Lines). The explosive growth in both enplanements and operations through the late 1980s reflected its essential unconstrained capacity.

Largely because of its enormous buffer of open space, the towns adjacent to D/FW Airport grew in an uncharacteristically orderly fashion. Unlike perhaps any other large hub airport, these neighboring towns found that the most desirable residential property lay adjacent to the airport fence -- which was still a long distance from the nearest airport facility. Just like the airport itself, the towns on all sides of D/FW grew explosively and successfully. Although all the airport neighbors had existed as rural villages prior to the siting of the airport, these towns' economic success was in part a function of the unspoken compact between the airport proprietor and its neighbors that the airport would comply with its published airport master plan. That plan projected that the airside and landside facilities would need to expand but that the airport had sufficient property to serve its needs well into the next century without adversely affecting these communities.

When the airport proprietor announced, in 1989, that it would need to build two new runways on property outside the original airport envelope and immediately adjacent to neighboring residential communities, the news was greeted as a betrayal of

their long-standing trust.

Rather than try to rebuild that trust and work cooperatively (as it had successfully done for almost 20 years), the airport proprietor dug in its heels and made it clear that it would proceed with its proposed \$3 billion expansion plan with or without the community's acquiescence. The result was the longest and most hostile airport-community war in the last generation. The three neighboring municipalities believed that it was a fight for the survival of their communities: one runway would have obliterated the City of Grapevine's historic downtown and the City of Euless' most prosperous mixed use residential community, and the other would have destroyed the residential core of the City of Irving.

The battle resulted in years of litigation in several courts, numerous administrative skirmishes, the enactment of special legislation by the Texas State Legislature, and almost constant attention by both the airport and the communities. And, after almost seven years, the battle is not over. Construction is underway on the first runway but the second runway remains stalled in threats of litigation. The landside improvements (including a new terminal) have fallen victim to escalating costs and financial uncertainties by the airport's principal hubbing carrier. Whether the second runway and the proposed \$1 billion terminal ever will be built is in doubt.

Even more importantly, the dispute has destroyed any hope of a cooperative relationship between the airport and its neighbors. These neighboring communities help provide many of the essential public services for the airport including judicial functions, fire protection, sewer and water service. It remains to be seen the long-term effect of the dispute, but it is clear that the spirit of cooperativeness which helped ensure the success of both the airport and its neighbors has been lost forever. There is no question that the airport proprietor's strategic decision to fight rather than work with the community has been extremely costly in the short-term and in the airport's long-term ability to grow to serve its air carriers.

#### 3.2.2 St. Louis (Missouri) Lambert Field

In the mid-1970s, it became clear that the St. Louis, Missouri metropolitan area needed a new airport. The existing Lambert International Airport in suburban St. Louis County could not handle the projected growth in the region. The site is extraordinarily constrained by infrastructure development on all sides which would be impractical to move. After a detailed planning process, planners recommended constructing a new airport across the Mississippi River near the rural towns of Columbia and Waterloo, Illinois. The selection of the Columbia-Waterloo site galvanized long-simmering rivalries between St. Louis and its neighbors in Illinois. Intense political and legal pressure -- which reached to the level of the President of the United States -- ultimately killed the project.

To no one's surprise, it turned out that the planners were right: Lambert Field quickly became too small to handle the growth in air traffic. As a result, two parallel events are occurring today.

In Illinois, St. Clair County has obtained federal approval to

expand the Scott Air Force Base to accommodate joint military and civilian operations so that the airport can serve commercial air traffic. Although, for reasons of political survival, St. Clair officials publicly disclaim any intent to develop a large hub airport to compete with St. Louis's Lambert Field, the reality is that, when fully operational, Scott Air Force Base will provide an ideal release value for airfield capacity problems in St. Louis.

At the same time, the City of St. Louis (the proprietor of Lambert Field) is engaged in an effort to shoehorn more capacity into Lambert Field by expanding into residential neighborhoods in the adjacent city of Bridgeton, Missouri. The City of Bridgeton and its grassroots organizations have launched a massive political and legal war against the airport expansion which already has delayed the project at least five years, cost the airport proprietor the legal authority to use passenger tax revenue to purchase needed real estate, and claimed among its victims the last candidate for Governor of the state and several state legislators. In the face of Bridgeton's well-established and well-organized opposition machine, even the occasional olive branch from St. Louis receives little attention.

Although the St. Louis airport expansion battle is on-going and Bridgeton's ultimate success at killing the project remains to be seen, the St. Louis metropolitan area already has seen the costs of the airport's refusal to work with (and attempt to accommodate the concerns of) its neighbors. Had St. Louis and its neighbors gotten together in the 1970s, St. Louis — perhaps instead of Denver — might now be enjoying the benefits of an entirely new airport to serve central United States. Instead, St. Louis is engaged in a fight-to-the-death simultaneously with its competitors across the Mississippi River and with its airport neighbors. With no end in sight to the battle, St. Clair County is likely to be able to step into the void to develop an airport which will compete with St. Louis's Lambert Field, ultimately to the detriment to the airport proprietor.

### 3.2.3 Chicago (Illinois) Metropolitan Airports

The City of Chicago operates two air carrier airports: Chicago O'Hare International Airport, the world's busiest, and Midway Field, a smaller origination/destination airport. While Midway is surrounded by commercial, industrial and residential neighborhoods within Chicago, O'Hare Airport is located along the northwest border of Chicago, adjacent to growing residential neighborhoods and office campus developments on three sides. The relationship between Chicago and its neighboring municipalities always has been a complex and stormy one, and the airport is no exception.

The suburban cities depend for their very existence upon O'Hare which not only provides an enormous direct employment base for their residents but is the economic stimulus for office, commercial and industrial development which is essential for their survival. Notwithstanding their need for the economic benefits which O'Hare provides, the suburban cities have historically been vigorous and unrelenting in their criticism of Chicago's failure to address the noise impacts which O'Hare visits on their residents. The hostility between Chicago and its neighbors over airport noise has become virtually the defining characteristic of the city-suburb relationship for more than a

dozen years.

Chicago has taken numerous costly steps in the direction of providing noise mitigation for its neighbors. These steps, however, have not included any meaningful effort to involve the communities in decision making or to provide any degree of certainty over the future noise environment.

Although there have been many lawsuits and even more political battles between Chicago and its neighbors, the latest series of disputes has threatened Chicago's very authority to operate O'Hare. Since the early 1990s, Chicago has repeatedly hinted at the need to build new airfield capacity to keep pace with increasing operations. Each time Chicago has suggested the need for a new capital project, suburban reaction has been increasingly hostile. Finally, unable to establish a dialogue with Chicago, the suburban cities moved recently to the legislative front to usurp from Chicago the authority to operate O'Hare. The suburban cities introduced legislation in the last session of the state legislature which would have authorized the state government to wrest control of O'Hare from Chicago and to create a new state-administered authority to own and operate the Chicago metropolitan airports. The suburban cities believed that a new airport authority, controlled by the State of Illinois, would be more responsive to their concerns than an airport owned and operated by Chicago.

For complex political reasons, Chicago took seriously the threat that the Illinois State Legislature could and would wrest control of O'Hare. In April of this year, using an arcane law which authorizes the creation of *interstate* airport authorities, Chicago entered into an agreement with the City of Gary in the neighboring state of Indiana to share authority over control of O'Hare. Chicago had been advised that an interstate airport authority would be immune from takeover by the State of Illinois or the suburban cities. Chicago's theory remains in litigation at this writing.

It appears, for the immediate future at least, that Chicago has been successful again in stymieing the suburban cities' efforts to gain some degree of control over O'Hare. At the same time, however, Chicago's moves have only strengthened the neighbors' resolve to do battle over O'Hare impacts and have helped ensure long-term animosity between Chicago and its neighbors.

### 3.3 Models of Effective Airport-Community Cooperation

In all of these cases, the airport proprietors lost not only time and money in battling their neighbors. They have, essentially, institutionalized a state of animosity with their neighbors which made even routine cooperation difficult. As discussed earlier, the fragmented legal control over airport siting and operations means that airports often must rely upon cooperation from their neighbors for political support and practical assistance in delivery of essential public services. Although, in the short term, many of these airports ultimately were successful in implementing their capital projects, they did so at the expense of long-term cooperation and confidence. The long-term cost is particularly difficult to measure because it includes intangible indirect costs, including the cost of increased scrutiny by local

government regulators and additional administrative burdens, as well as more direct costs including extra planning and environmental studies to protect against probing legal attacks which could exploit even the smallest legal vulnerability in the airport's actions.

Standing in stark contrast to these examples of airport-community animosity are instances in which airport proprietors have successfully reached accommodation with their neighbors.

### 3.3.1 Denver (Colorado) International Airport

The best (and best-known) example of airport-community cooperation concerns the closure of Denver, Colorado's Stapleton International Airport and the construction of the new Denver International Airport. Denver International, when fully built-out will occupy more than 50 square miles, will provide about 200 gates and have up to twelve 16,000-foot runways. When it opened in February 1995, Denver International Airport was the first new air carrier airport built in the United States in almost a generation, which itself stands as a significant accomplishment. That the project was accomplished with the cooperation and assistance of the host community is nothing short of remarkable.

One of the most significant elements was the execution of a series of intergovernmental agreements between the City and County of Denver (the airport proprietor) and Adams County, the jurisdiction which lay adjacent to the old Stapleton Airport and in which any new airport would have to be located. Denver had proposed a significant expansion of Stapleton which would have taken land in Adams County and also would have exacerbated an already intolerable noise environment in Adams County's residential communities. Adams County threatened to delay any expansion of Stapleton in years of litigation and to use its legal jurisdiction to influence the airport's development, financing and revenues. Denver recognized the threat as real not only because Adams County had already demonstrated its political resolve but also because the legal impediments which Adams County could erect could have been substantial. (The property onto which Denver proposed to expand Stapleton Airport included parts of the Rocky Mountain Arsenal which has been called the most environmentally contaminated property in the world.)

Approval to build the new airport involved complex negotiations among several local governments and Denver. The result of the intergovernmental agreements was that Denver was allowed to annex the land necessary for the new airport site in exchange for agreement to close the old Stapleton Airport and to share the economic benefits from airport-related development. The agreements also set definite and enforceable limits on the noise which the new airport could produce and committed Adams County to ensure that development in the vicinity of the new airport would be compatible with noise levels both at the time the airport opened and projected for the future. The agreements stipulate not only the location of the airport and its essential facilities (including, especially, roads, access points, runways, terminals and related development) but also guarantee to Adams County the future noise environment and provide meaningful penalties for any noise exposure in excess of the agreed limits.

The construction of the new airport came only after almost a dozen years of intense negotiations and litigation (and threats of further litigation). Rather than fight to allow expansion of Stapleton Airport (which could, at best, have provided short-term capacity gains for the region) Denver was convinced that its long-term interests would be better served by providing meaningful concessions to Adams County in exchange for an agreement to allow the construction to an entirely new airport.

In many respects, the intergovernmental agreements which led to the construction of Denver International Airport resulted from a unique coincidence of political and legal factors which are unlikely to be repeated. Nevertheless, the Denver-Adams County experience provides an instructive model for how leadership by both the airport proprietor and the neighboring local government can lead to an airport project which was seemingly impossible to achieve.

### 3.3.2 Palm Beach (Florida) International Airport

No other example of airport-community cooperation is even comparable to the Denver experience either in the duration of the battle and subsequent negotiations or in the ultimate result achieved. Other case studies, however, are instructive because their situations are more likely to be replicated.

Palm Beach International Airport is located in an industrial area of West Palm Beach, Florida. Notwithstanding its favorable location, most aircraft arrival and departure routes require overflight of the Town of Palm Beach and nearby areas of West Palm Beach which are among the wealthiest communities in the United States. These communities not only are well-funded but also are politically sophisticated: local airport-community disputes in Palm Beach are likely to receive national attention if, for no other reason, than that the grassroots leaders are the scions of America's wealthiest and most powerful families.

It was within this context that Palm Beach County proposed a modest expansion of its airport facilities which prompted litigation over airport noise and related issues. While the County likely could have won the litigation, such a victory would have been Pyrrhic as it would have institutionalized the growing hostility toward the airport and growing political pressure to take draconian political actions to reduce airport noise impacts.

Instead, Palm Beach County negotiated a settlement of the litigation in exchange for an agreement to engage in an aggressive noise abatement and planning program. Although settlement agreements in litigation over airport development are not unusual, Palm Beach County adopted the unusual -- and thus far successful -- approach of inviting the community to become a partner with the airport in addressing noise issues. Using the community's political influence as a veiled threat, the airport successfully convinced air carrier operators to engage in a voluntary program to replace aircraft operations using noisy Stage II aircraft with quieter Stage III aircraft. (The program had to be voluntary because federal law severely restricted the proprietor's ability to impose restrictions on aircraft operations.) The result was that, in less than four years, the airport became one of the quietest in the nation, with the highest proportion of operations by Stage III aircraft of all airports in the eastern half

of the country. Palm Beach County accomplished its objective not through legal maneuvers and belligerency but by creating an atmosphere of trust and good faith which went a long way toward restoring community confidence in the airport proprietor. (Of course, as in any such voluntary consensual arrangement, there remain community leaders who are critical of the proprietor's efforts and skeptical that the noise benefits will prove to be long lived.)

The second prong of the Palm Beach agreement was the County's commitment to engage in an aggressive noise mitigation and education program. Through an exhaustive noise compatibility planning process -- which included the leaders of the former litigants among its advisors -- Palm Beach successfully educated the public about what it, as airport proprietor, could and could not do about noise from aircraft operations. The proprietor adopted a Noise Compatibility Program and committed to working with federal regulators to ensure that aircraft flight patterns followed those desired by the community leaders.

### 3.3.3 Seattle-Tacoma (Washington) International Airport

Seattle-Tacoma International Airport lies midway between the urban centers of Seattle and Tacoma, Washington and is surrounded on three sides by established residential communities. Beginning in the early 1980s, it became clear to the Port of Seattle, the airport proprietor, that a change in aircraft arrival and departure flight patterns would be necessary to increase airport capacity without the construction of new runways. Working closely with the FAA, the airport proprietor developed a new series of arrival and departure gate posts which would increase the airport capacity but would also have the effect of routing aircraft over residential areas of the Seattle metropolitan area which previously had not experienced aircraft overflights. (Although the FAA has the legal authority to change aircraft arrival and departure patterns unilaterally, the federal agency has recognized in the last several years that changes in flight patterns can have significant political ramifications for an airport proprietor. As a matter of policy, therefore, the FAA rarely changes flight patterns without at least the acquiescence of the airport proprietor.)

The proposed changes in aircraft flight patterns came at the same time -- and were partly a response to -- an increase in aircraft operations which had prompted increased community concern about the noise effect of airport operations. What was unusual about the concern in Seattle, however, was both its geographic diversity (many of the community leaders represented constituencies more than 15 air miles from the airport) and the fact that it was tied almost entirely to increases in aircraft operations and changes in flight patterns without any proposal to build new runways at the airport.

The Port of Seattle recognized early the potential for the burgeoning concern about aircraft overflights to blossom into a widespread grassroots movement. Rather than let the concern fester, however, the Port decided early to take affirmative actions to address the concerns and to demonstrate its bona fide interest in addressing aircraft noise issues. With the cooperation

of community and regional organizations, and local governments, the Port convened a mediation process designed to reach a consensus solution to the problems posed by increased aircraft operations.

Over the course of an 18-month process of formal mediation, the Port, the affected air carriers, local governments, neighborhood organizations from throughout the metropolitan area, and the business community grappled with the issue of aircraft noise and flight patterns. The participants determined that a solution to the overflights problem was so complex and involved so many neighborhoods that a new and innovative process was needed to receive input from all the potentially affected groups. A formal Noise Mediation Committee was established with representation from all the affected interest groups which met regularly to discuss possible solutions. The result was the Port of Seattle's adoption of a package of noise abatement and mitigation measures which included a noise budget to limit operations by noisier Stage II aircraft, limitations on nighttime operations, an ambitious program of sound insulation of residential properties, control of ground noise by restricting maintenance operations, establishment of a permanent noise monitoring system, and creation of a Noise Abatement Committee to oversee implementation of the program.

The Port of Seattle's mediation program has not, however, been an unqualified success. Some in the affected community criticized its lack of effective enforcement mechanisms, while others criticized the noise abatement goals as too modest. Notwithstanding this criticism, the Port of Seattle accomplished a remarkable feat of bringing together a huge number of potential opponents into a consensual process which -- at least temporarily -- acted as an important release valve for growing community distrust and hostility.

The Seattle-Tacoma program has been moderately successful in achieving its dual goal of reducing airport noise and mitigating those effects which are unavoidable. It has achieved a phase-out of Stage II aircraft at a rate considerably faster than the national average and it has insulated more homes against aircraft noise than many much larger airports. The ultimate success of the program, however, remains to be seen: less than three years after completing the program, the Port announced a plan to build a new runway at the airport, an announcement which reignited the same neighborhood distrust which had been dispelled (or at least deferred) by the mediation process.

### 3.3.4 Other Examples

These three examples provide perhaps the best illustrations for how an airport and its neighbors can use formal agreements to structure and provide certainty to their relationships. Although the precise agreement mechanism differs in each situation, in all three cases, both the airport and the communities can enjoy a certain degree of certainty not only about their political relationship but also -- importantly for the neighbors -- the environmental and economic impacts which the airport will cause in the foreseeable future.

Variations on these mechanisms have been used by other airports to provide an assurance of the future environment. For example,

in Santa Ana, California, Orange County (the proprietor of John Wayne Airport) engaged in long and contentious litigation with its neighbors over noise impacts. In settling that litigation, Orange County agreed to the nation's most stringent restriction on noise from airport operations which has made that airport the quietest in the United States. The agreement, though limited to noise issues, has helped both Orange County and the neighboring City of Newport Beach engage in meaningful long-term land use and capital facility planning.

In suburban Detroit Michigan, the airport proprietor chose a more informal mechanism to diffuse a potentially explosive debate about noise issues. When the FAA changed flight patterns for arriving and departing aircraft *without* the airport proprietor's approval, the community erupted in anger. The anger threatened to endanger both long-standing community-proprietor cooperation and the airport's impending bond financing for construction of new runways. Wayne County, the airport proprietor, initiated an immediate and aggressive program to demonstrate to the community its genuine interest in addressing noise problems which ultimately included getting the FAA to agree to change flight patterns and obtaining an exemption from a federal statute which would have prohibited the airport from imposing noise-based flight restrictions at the airport. In large part because of Wayne County's efforts to implement an immediate program which demonstrated to the community its intention to address noise problems cooperatively, community anger subsided without any substantial injury to the airport's capital development program.

### 3.4 Lessons from Successful Resolution of Airport-Neighbor Disputes

None of these successes has been realized without considerable sacrifices. In all these cases, the airport and its neighbors did not reach the negotiating table without litigation -- or the credible and imminent threat of litigation -- by its neighbors. But litigation was not the single formula for success. As the Dallas/Ft. Worth and Chicago O'Hare examples prove, litigation is neither a guarantee of success nor necessarily an efficient tool for resolving potential airport-community disputes. Several lessons can be taken from the recent successes in amicable resolution of airport-community disputes.

#### 3.4.1 Understanding of Opponents' Objectives

An airport must make an early and realistic assessment of its potential opponents. This assessment must include not only an identification of the potential adversaries (who may not necessarily be the obvious groups or municipalities) but also an evaluation of the potential opponents' objectives.

Among the questions which an airport should ask is whether the opponents are bent on attacking the airport for its own sake to recompense perceived past wrongs or whether the opposition is based upon concern about specific airport projects which will have discernable impacts on their community. Have the opponents publicly asserted one basis for opposition (e.g., adverse noise impacts on schools) but is their opposition actually grounded in another hidden issue (e.g., loss of tax base)? Is one party publicly asserting opposition (e.g., a community group) as

a shield for another interest (e.g., a potential real estate developer)?

This initial assessment is essential because it forms the foundation for any later judgment of whether it is possible to accommodate community and airport concerns. It is particularly important that this assessment be made early in the planning process before both the airport and the community become entrenched in public positions which make it more difficult to discern the opponents' real objectives.

#### 3.4.2 Evaluation of Opponents' Strengths

The next important step is for the airport to make a realistic calculation of the potential opponents' legal, political and practical strength. A community-based grassroots opposition may be vociferous and bothersome but, without political support or legal tools behind it, is not likely to stand as a serious impediment to the airport. At the other extreme, opposition led by a local government that has zoning and land use control over airport projects should be taken seriously because of the potential of the opponents to halt any airport project.

This calculation entails not only a judgment about the opposition's legal tools (which, not incidentally, include the opposition's ability to raise the funds necessary for a prolonged legal battle) but also about the opposition's standing in the regional community. As airports such as Palm Beach International have discovered, a grassroots organization growing out of a residential community with considerable wealth and political sophistication is considerably more worrisome than a similar group based in a neighborhood with neither the political support nor financial wherewithal to sustain a battle with the airport. An airport must be especially attentive to avoid analogizing its situation to other airport-community battles. The strength of an opposition group derives from a unique combination of political and legal factors which rarely are the same at different airports.

#### 3.4.3 Feasibility of Accommodating Neighbors' Needs: Measuring Risk and Reward

The third -- and most difficult -- lesson is that an airport must determine whether there are creative ways to accommodate both the airport's needs and the community's *genuine* concerns. Airport planners who are told to examine airport development needs in isolation ultimately will do the airport a disservice; planners must be instructed to determine whether there are alternative airport development scenarios which could accommodate both the airport's needs and community concerns. They must offer the airport an assessment of the cost of alternative scenarios so that the proprietor can make a judgment about whether easily quantifiable costs are offset by the less quantifiable costs which would be incurred in a dispute with the community. Cookie-cutter solutions to airport development projects may reduce an airport's planning budget but can be shortsighted if they generate community opposition which could have been avoided by creative planning.

### 3.4.4 Develop Permanent Mechanism for Cooperation

The most important lesson learned from all of the case studies of successful airport-community accommodation is that an essential element always has been the inclusion of a mechanism to ensure permanence.

Permanence can be achieved through litigation-imposed settlements, though it is neither necessary nor particularly desirable to await the outcome of litigation to reach a negotiated resolution. An intergovernmental agreement can provide to both parties the carefully tailored permanence which each seeks.

For many opposition groups, the uncertainty of airport development is the single greatest catalyst for hostility. Whether characterized as a sense of political helplessness or economic uncertainty, communities frequently are willing to accept considerably greater adverse impacts if those impacts are certain. Certainty, however, can come at a price for airport proprietors. Airports that are unaccustomed to long-term planning and development commitments may find the concept of a permanent airport layout (which cannot be altered except through cumbersome approval procedures) to be unpalatable.

The concept of certainty or permanence can have material benefits for an airport proprietor beyond the value of political peace which should alleviate any distaste which proprietors may have for making long-term commitments to their neighbors. Where future expansion opportunities are restricted because of potential commercial or residential encroachment, an intergovernmental agreement can restrict future development in order to reserve lands for airport-compatible land uses. Not only could this provide an airport with a valuable opportunity to land bank (with little or no direct acquisition cost) but it could enhance the potential for airport-related development for cargo, maintenance, freight forwarding or other facilities which could benefit from being adjacent to the airport. An agreement can provide a mechanism for expediting local government approvals which could help the airport proprietor develop collateral lands to their best productive use.

Effective agreements recognize not only the parties' current needs but also their continuing political and legal obligations. For example, an airport would invite a permanent headache by allowing community control over routine airport operational matters which are best left to the airport's professional staff. At the same time, an airport should be willing to cede certain control over long term land use issues which might be important to the community. The division of responsibilities must be realistically tied to the parties' *appropriate* role: an airport proprietor is obligated to operate the airport for the benefit of its tenants and the traveling public and the local government is obligated to protect the health and welfare of its residents and taxpayers.

Finally, any effective intergovernmental agreement must include a dispute resolution and amendment mechanism which recognizes that circumstances and the airport's and community's needs may change over time. Both the dispute resolution mechanism and the provision for amendment must be sufficiently cumbersome that the agreement effectively discourages frequent resort to the

courts, an arbitration procedure or similar scheme to resolve routine administrative issues.

## 4. CONCLUSION

Recent American experience with airport expansion and development projects has been marred by frequent airport-community disputes. While airport proprietors in the United States have become adept at such battles, the better model is one epitomized by the new Denver International Airport. That new airport was built as the result of a series of intergovernmental agreements which divide the costs and benefits of the airport equitably, which provide both the airport and community long-term certainty about airport development decisions and which provide both the airport and community with a mechanism for effective resolution of potential new disputes before animosities can grow. The success in building the new Denver Airport suggests that this model provides a valuable lesson for airport planning.

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