ORAL ARGUMENT NOT YET SCHEDULED

Nos. 16-1366, 16-1377, 16-1378,
17-1010, 17-1029 (Consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BENEDICT HILLS ESTATES ASSOCIATION, *et al.*,
Petitioners

v.

FEDERAL AVIATION ADMINISTRATION, *et al.*,
Respondents

On petition for review of an action by
the Federal Aviation Administration
49 U.S.C. § 46110

BRIEF OF THE CITY OF LOS ANGELES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 28(a)(1) and 26.1, *amicus curiae* City of Los Angeles certifies the following:

(A) Parties and Amici

All parties and intervenors appearing in the proceedings below are listed in the Brief of Petitioners. It is the undersigned counsel's understanding from Petitioners that an additional homeowners' or neighborhood organization intends to file a brief in support of Petitioners.

(B) Ruling Under Review

Reference to the ruling at issue appears in the Brief for Petitioners.

(C) Related Cases

The cases on review have not previously been before this Court or any other Court, and the City of Los Angeles is not aware of any related cases in this Court or any other Court.

DISCLOSURE STATEMENT

The City of Los Angeles is a municipal corporation, organized under the provisions of the Los Angeles City Charter. There is no parent corporation for the City of Los Angeles. The City of Los Angeles has not issued stock, and therefore, no publicly held corporations own 10% of its stock.

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TABLE OF AUTHORITIES

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GLOSSARY

City	City of Los Angeles
CLIFY	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
DAHJR	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
EA	FAA's Metroplex Environmental Assessment
FAA	Federal Aviation Administration
GADDO	Waypoint in IRNMN, HUULL and RYDRR Arrival Routes
IRNMN, HUULL, and RYDRR	New FAA Arrival Routes
LAX	Los Angeles International Airport
Metroplex	Southern California Metroplex Project
NEPA	National Environmental Policy Act
SHPO	State Historic Preservation Officer

NOTE: FAA flight routes and waypoints, like "DAHJR" are assigned names with five capital letters that do not represent acronyms and do not have any other formal title.

STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND INTEREST

All Petitioners and Respondents have consented to the filing of this brief. *See* Cir. Rule 29(a)(2). The City of Los Angeles states that no counsel for a party authored this brief in whole or in part, and no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. *See* Cir. Rule 29(a)(4)(E)(i)-(iii).

This brief is submitted by *amicus curiae* City of Los Angeles in support of Petitioners to provide this Court with additional context regarding the Federal Aviation Administration's ("FAA") August 31, 2016, Finding of No Significant Impact and Record of Decision for the Southern California Metroplex. FAA's new flight routes changed the noise environment in Los Angeles, with effects on both City residents and the City's fundamental interests. The City is the second most populous city in the country, with a U.S. Census-estimated 2016 population of 3,976,322 people and covers an area of about 469 square miles.

Under federal law, the City plays critical roles in the management of the effects of aircraft noise. First, as the proprietor of Los Angeles International Airport ("LAX") and Van Nuys Airport, the City undertakes mitigation, noise planning, and land use compatibility efforts to address aircraft noise. *See* 49 U.S.C. §§ 47503-05 (noise management program for airport proprietors); FAA Order 5190.6B, *Airport Compliance* ¶ 13.2.a.2 (Sept. 30, 2009) (summarizing airport proprietor and federal roles in noise management). In execution of its police powers, the City is also charged with land use planning and development, zoning, and housing regulations to achieve multiple goals, including noise compatibility. *See* FAA Order 5190.6B ¶ 13.2 (Sept. 30, 2009) (role of local governments in zoning to address aircraft noise compatibility).

The City exercises these powers in a number of ways, including:

- operating a noise office for LAX and Van Nuys airports;
- hosting and supporting a LAX Noise Roundtable made up of representatives of nearby communities, Members of Congress, FAA, and others;

- providing over $500 million in sound insulation to thousands of homes;
- collecting and reporting noise complaints and airport operations data such as the radar tracks for aircraft using City airports; and
- promoting noise compatibility procedures such as having the vast majority of aircraft depart over the Pacific Ocean west of LAX.[1]

Indeed, FAA's Metroplex Environmental Assessment ("EA") directed noise complaints to the City's noise office (and similar offices for other airports) and provided City contact information rather than such information for the FAA itself. Final EA at F-5 to F-5 [AR 1-B-12; JA ___]. The City has seen a spike in noise complaints since FAA's implementation of the Metroplex.

[1] See generally, https://www.lawa.org/en/lawa-environment/noise-management/lawa-noise-management-lax and https://www.lawa.org/-/media/lawa-web/tenants411/file/lax-noise-brochure.ashx?la=en&hash=D00255E63EA7CFAF3D909D52805D331202FF6DD0 .

The City's interests in historic preservation are also affected by noise increases. Federal law provides special protection for historic resources in both the National Historic Preservation Act, 54 U.S.C. § 306101, *et seq.*, and Section 4(f) of the Department of Transportation Act. 49 U.S.C. § 303(c). The City created Historic Preservation Overlay Zones to identify and protect neighborhoods with distinct architectural and cultural resources. Los Angeles Municipal Code § 12.20.3. Many of these Zones are overflown pursuant to FAA's new procedures, and are affected by noise increases, including at least three different historic Zones (West Adams Terrace, Jefferson Park, and Adams-Normandie) directly below the IRNMN, HUULL, and RYDRR flight tracks along the I-10/Santa Monica freeway corridor.[2] The City also maintains a list of Historic-Cultural Monuments,[3] many of which are concentrated along the flight tracks at issue. FAA showed many, but not all, of these

[2] https://preservation.lacity.org/files/West%20Adams%20Terrace%20Survey%20Map.pdf ; https://preservation.lacity.org/files/Jefferson%20Park%20Survey%20Map.pdf; https://preservation.lacity.org/files/Adams-Normandie%20Survey%20Map.pdf .

[3] https://preservation.lacity.org/sites/default/files/HCMDatabase%23110717.pdf

historic resources in the Environmental Assessment, including those under the IRNMN, HUULL and RYDRR routes. Draft EA at 4-17, Exhibit 4-5 [AR 2-A-5; JA ___].[4] Pursuant to City ordinances, the City's Planning Department must make specific factual findings before it issues any permits to demolish, alter, or remove such a building or structure if it has been included on the National Register of Historic Places, or has been included on the City of Los Angeles list of Historic - Cultural Monuments. *See* Los Angeles Municipal Code § 91.106.4.5.

In addition, the City has proprietary interests in its parks, beaches, recreation areas and other programs that are affected by noise along the Metroplex flight routes. FAA's Environmental Assessment showed locally-owned parks throughout Los Angeles that are overflown by FAA's Metroplex routes. *See* Draft EA at 4-17, Exhibit 4-5; [AR 2-A-5; JA ___]. Parks are also accorded special protections under Section 4(f) of the Department of Transportation Act. 49 U.S.C. § 303(c).

[4] FAA's files are difficult to use due to the scale and size. Magnification in a file reader of over 1000 % is often necessary to see the individual resources.

ARGUMENT

SUMMARY OF ARGUMENT

The City of Los Angeles, California ("City"), supports Petitioners' request for a remand of the Federal Aviation Administration's ("FAA") Southern California Metroplex Project ("Metroplex") Environmental Assessment and Finding of No Significant Impact. Remand is required in order for the FAA to comply with National Environmental Policy Act ("NEPA") requirements and to evaluate changes to reduce environmental impacts.

The City files this *amicus curiae* brief to provide the Court its perspective as the largest city and airport operator affected by the shortcomings of FAA's environmental assessment process. Relying on the City's unique expertise in local airport and noise issues, this brief expands upon the Petitioners' identification of FAA's failure to adequately disclose FAA's proposed action and failure to conduct adequate analysis of environmental impacts. *See e.g.*, Petitioners' Brief at 44-60.

The issues in this case, while technical, are not abstract: FAA's Metroplex is moving flight routes to concentrate aircraft overflights above people's homes, schools, churches, parks, and historic sites, introducing noise that previously was not present, or not present to the same degree. Thus, the public and the City had a deep interest in understanding how FAA's Metroplex would affect the environment in Los Angeles.

However, FAA's Metroplex NEPA process failed in its most fundamental job of clearly identifying for the public the proposed federal action, its alternatives, and environmental effects. An ordinary person could not readily determine what FAA was proposing, how it differed from what was in place before FAA's action, and what it meant for a person's enjoyment of her home, school, or favorite park.

If a resident could not easily determine where flight route changes would be located relative to her home, FAA has not done its job under NEPA. To its credit, FAA acknowledged some of these flaws and tried to provide supplemental information for the public after issuing the Draft Environmental Assessment, but it was too little, too confusing,

too difficult to use, and too late to enable meaningful public engagement.

Further, when FAA implemented the Metroplex in 2017, FAA routed aircraft much lower to the ground than disclosed in the Environmental Assessment, which relied on noise modeling conducted in 2015 and 2016. As a result of this shift in flight altitudes, noise levels are likely greater than what FAA analyzed and presented to the public for its review and comment.

When Metroplex was implemented, affected neighborhoods and residents were stunned, leading to a dramatic spike in complaints submitted to the City. As discussed below, FAA's flight track changes have caused an almost seven-fold increase in monthly complaints filed with the City. *Infra* at 14-15. These complaints are likely attributable to FAA's failure to communicate during the NEPA process and its unexamined flight procedure changes during implementation of the Metroplex project.

As a result, the City respectfully requests that this Court remand this matter back to the FAA to address the shortcomings in its

environmental review. FAA must meet NEPA requirements by: (1) clearly communicating the proposed federal action and how it differs from the status quo; (2) properly conducting noise and other environmental reviews; and (3) considering alternatives or mitigation to reduce environmental impacts.

I. THE FAA'S METROPLEX ACTION REARRANGED FLIGHT ROUTES OVER LOS ANGELES, CAUSING SIGNIFICANT COMMUNITY IMPACT

FAA's Metroplex project changed flight routes over dozens of neighborhoods in Los Angeles. As seen below in Figure 1, from the Environmental Assessment, the resulting corridors for these routes cover the entirety of the City.

The Metroplex was an FAA project to implement elements of its Next Generation Air Transportation System in Southern California. In particular, the Metroplex was intended to provide new routes for aircraft using airports in the region that would use satellite-based navigation and modern technology rather than older ground-based radars. Finding of No Significant Impact at 2 (Aug. 31, 2016) [AR 1-A-1; JA ___]. When implemented appropriately, such new routes can

increase efficiency and safety in the airspace. But they can also affect noise levels at residents' homes, requiring careful consideration of impacts.

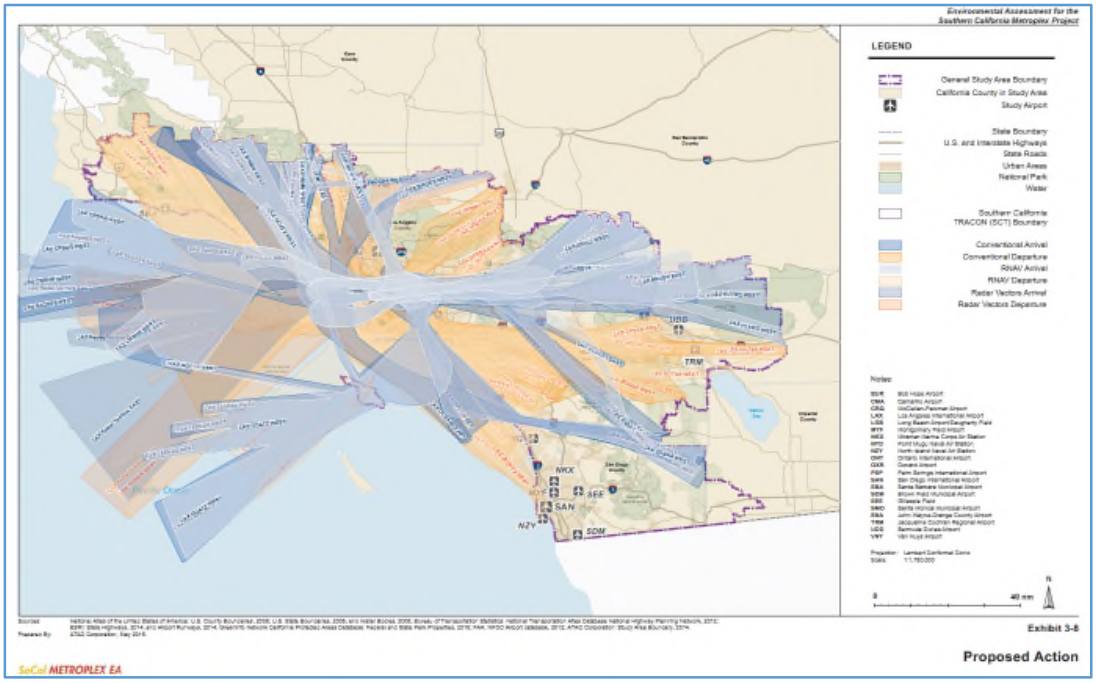

Figure 1: FAA Map of Proposed Metroplex Corridors To And From LAX[5]

FAA's Metroplex project changed routes over and near Los Angeles in a number of critical ways, which could not be anticipated by a reading of the Environmental Assessment. First, it shifted some routes from one area to another. For example, FAA added the IRNMN,

[5] Draft EA, Exhibit 3-8 [AR 2-A-4; JA __], with the flight corridors for LAX selected in the interactive PDF file.

HUULL, and RYDRR arrival routes to LAX in western Los Angeles and Culver City,[6] which shifted the route aircraft had taken about a half-mile north of the previous routes. *See e.g.*, AR-F-3-1 (route maps shown in public workshops) [AR 2-A-7; JA ___]; Final EA at A-573, -575 (same).

Second, the FAA's new "Next Generation" routes use Global Positioning System technology to allow aircraft to fly much tighter corridors, concentrating or "focusing" noise. *See* FAA Order 7400.2K, *Procedures for Handling Airspace Matter*s at ¶ 32-2-2.e [AR 9-A-22; JA ___].

> The term used to characterize the concentration of noise is "noise focusing." The actual flight tracks of aircraft flown on conventional [instrument flight procedures] using ground-based Navigational Aids (NAVAIDs) show broad dispersion around the trajectory of the defined procedures. The dispersion is typically based on the performance characteristics of individual aircraft types and pilot technique. In contrast, FAA's experience with satellite–based navigation procedures shows that actual

[6] These are the routes using the "CLIFY" waypoint referenced in Petitioners' Brief at pages 58-60. Because Petitioners focused on these routes, the City will do the same as consistent examples in its arguments. However, the use of these consistent examples do not mean that effects are limited to these routes. The same effects occur across Los Angeles.

> flight tracks and [Next Generation] procedures converge to a much greater degree. Therefore, aircraft flying [Next Generation] procedures and the associated noise are concentrated over a smaller area than would be the case for the same operations using conventional, [non-Next Generation instrument flight procedures.]

Id. "The FAA recognizes the Proposed Action introduces additional RNAV routes that include flight paths with more concentrated flight tracks along the route centerlines." Final EA at F-22 to -23 [AR I-B-12; JA ___]. However, because only broad 5-10 mile wide corridors were shown in the Environmental Assessment or its attachments, the public could not discern what homes would be affected by this noise focusing or how often they would be affected. *Infra* at 18-25.

Figure 2 below shows this before- and after-effect for FAA's IRNMN, HUULL, and RYDRR routes, reflecting the increase in the number of flights over homes below the routes. At the "DAHJR" and "GADDO" waypoints,[7] for example, *the number of direct overflights*

[7] FAA's route procedures make use of both fly-over and fly-by waypoints. A fly-over waypoint is a waypoint that must be crossed vertically by aircraft. A fly-by waypoint marks the locations of turns. Thus, the waypoints denote places where aircraft must make turns, meet certain altitudes, or maintain course.

increased from 10-30 per day to more than 300 per day, at least a ten-fold increase. *See* Figure 2.

Third, FAA route changes involved undisclosed changes to the altitude at which aircraft fly. Aircraft that are lower in altitude are noisier on the ground below. *See Aircraft Noise Technical Report* at 3-64 (August 2016) [AR 3-A-4] (distance from ground and altitude are factors for noise considered in FAA noise modeling for Metroplex). As discussed below, residents could not determine the proposed effects on altitude from the Environmental Assessment itself.

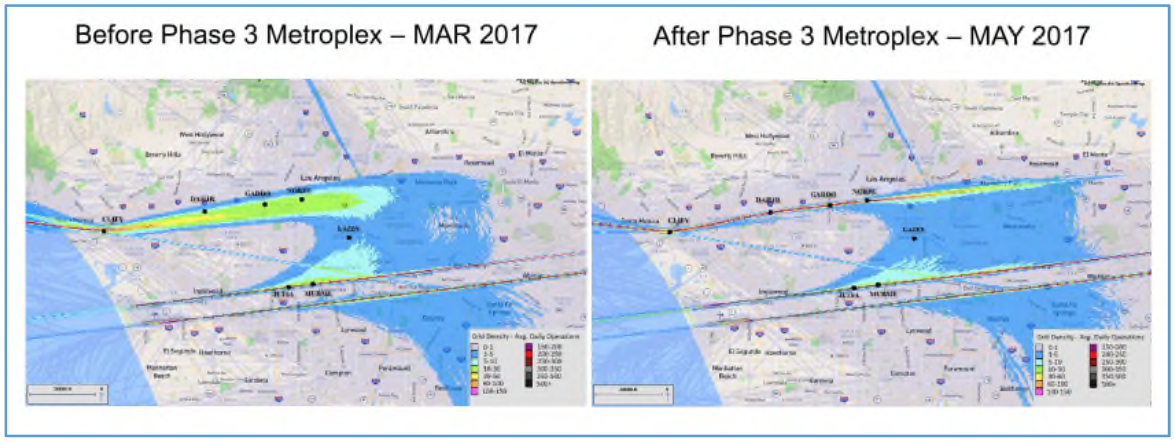

Figure 2: Concentration of Overflights Before and After IRNMN, HUULL, and RYDRR Metroplex Arrival Route Implementation[8]

[8] *LAX North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation* at 5-7, https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_presentations/noise_management_prese

Whether caused by the FAA's relocation of flight routes, the concentrated "noise focusing" tracks, flights at lower altitudes, or a combination of all these factors, noise complaints to LAX have dramatically increased.[9] Because FAA's routes have not been in place for a full year, the best way to appreciate the effect is to compare months in late 2017 after implementation to late 2016 before implementation. Between November 2016 and November 2017, for example, noise complaints associated with LAX increased 693 % (from

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ntation/noisert_170913-dahjr-altitude-analysis.ashx?la=en&hash=F6C623B1F8038F97AA174354E42C6B5370638995. This data and map were produced by City staff using FAA radar data in the regular course of their noise management duties and kept as a public record with public access on the City's airport website. While the radar data obviously post-dates the FAA's implementation decision, the City presents it to help the Court better understand actual flight patterns that are not discernible from the Environmental Assessment.

[9] As noted above, the Environmental Assessment directed residents to send future complaints about noise to the City, not to FAA, which was responsible for the changes in the airspace. Final EA Appendix F at F-5 to F-5 [AR I-B-12; JA ___]. Noise complaints submitted to the City are compiled and published monthly as public records on the City's airport website: https://www.lawa.org/en/lawa-environment/noise-management/lawa-noise-management-lax/noise-management-monthly-report.

2,936 to 23,290).[10] Of these complaints, 46 % were from residents of the City of Los Angeles.[11] And, as seen in Figure 3 below, a substantial cluster of these complaints came from locations along the Interstate 10 corridor through Los Angeles, Culver City, and Santa Monica, the location of FAA's IRNMN, HUULL, and RYDRR routes.

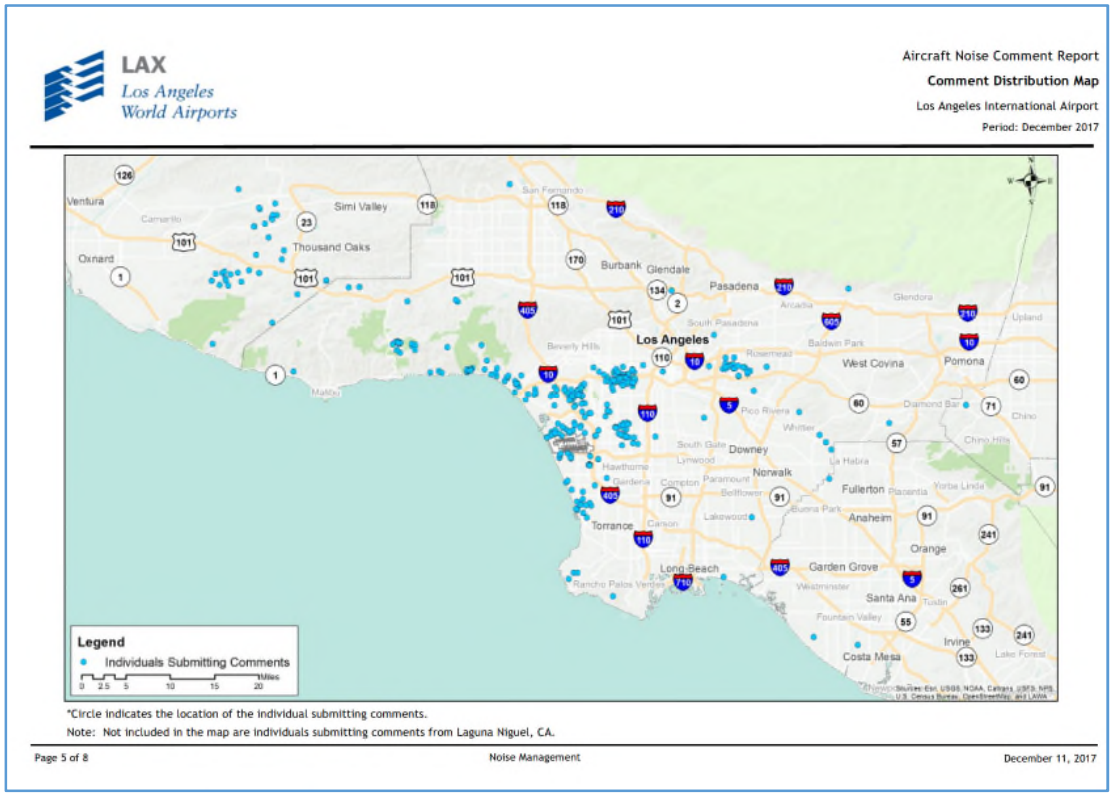

Figure 3: Map of Noise Complaints in November 2017[12]

[10] *See* page 2 at https://www.lawa.org/-/media/1c821f9a02f746f195ea902e2f5aff37.pdf.
[11] *Id.* at page 4.
[12] https://www.lawa.org/-/media/1c821f9a02f746f195ea902e2f5aff37.pdf.

As FAA continues to implement its Metroplex action throughout Southern California, more communities will feel its deleterious impacts. Changes to any flight routes may bring beneficial or harmful changes to different neighborhoods; for this reason, clarity in the NEPA process regarding route location is especially important.

II. FAA DID NOT ADDRESS FUNDAMENTAL CONCERNS REGARDING THE ADEQUACY OF THE ENVIRONMENTAL ASSESSMENT PROCESS

FAA's Environmental Assessment did not comply with its basic duties under NEPA, because it failed to describe the proposed federal action, alternatives to the proposed action, and its impacts in a manner reasonably accessible to the public. *See* Petitioners' Brief at 58 ("FAA fails to provide, in the EA, an accurate representation of the paths anticipated for aircraft overflights…"). Instead, FAA provided technically-dense prose, maps, and charts not readily understandable to the public. FAA's Environmental Assessment failed to provide residents the most critical information: how the proposed changes to routes would affect their homes and neighborhoods. These flaws explain some of the issues raised by the Petitioners regarding the

accuracy of flight paths and flight altitudes. *See e.g.*, Petitioners' Brief at 58-60, 63-66.

A. FAA Has a Legal Duty To Ensure Clear Communication of Its Proposed Action and Impacts

The Council on Environmental Quality regulations governing NEPA implementation make clear that agencies must ensure that "environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality." 40 C.F.R. § 1500.1(a). Agencies must also "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." *Id.* § 1500.2(d). As a result, "[e]nvironmental impact statements shall be concise, clear, and to the point…" 40 C.F.R. § 1500.2(b). And, "[e]nvironmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them." *Id.* § 1502.8.

FAA's own order implementing NEPA and the Council on Environmental Quality regulations also requires it to identify clearly

and plainly in environmental assessments what it the agency is proposing to do. FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures* at ¶¶ 404a-404c, 405b. All environmental assessments must "describe[] the proposed action with sufficient detail in terms that are understandable to individuals who are not familiar with aviation or commercial aerospace activities." *Id.* ¶¶ 209d (requirement to involve the public fully and effectively, including low-income and minority communities), 210 (plain language), 405d (plain description of proposed action).

B. FAA's Draft Environmental Assessment Did Not Convey Exactly Where Route Changes Were Proposed or Their Impacts

FAA's Draft Environmental Assessment for the Metroplex failed in this basic NEPA task, because the public could not discern from the document exactly where flight routes were before FAA's proposed action, where they would be afterwards, or how high aircraft would fly using the new routes. Instead, the Draft Environmental Assessment provided a very high-level jargon- and acronym-filled overview of airspace covering Southern California and a general description of 179

different route changes at 21 airports. Draft EA at Chapter 3 [AR 2-A-4; JA ___]. Textually, FAA just listed the 179 routes with acronyms meaningless to the average person and highlighted only a handful of example routes. *Id.* at 3-17 to 3-25. Figure 4 shows a sample of the information available to readers of the Environmental Assessment regarding particular routes that may or may not be directly over their homes.

Proposed Action Procedure	No Action Procedure	Procedure Type	Basis of Design	Airports Served	Transitions (enroute/ runway)[1]	Objectives
VAN NUYS ONE	VAN NUYS ONE	SID	Conventional	BUR	6/0	N/A
VENTURA SIX	VENTURA SIX	SID	Conventional	LAX	2/0	N/A
VISTA TWO	VISTA TWO	STAR	Conventional	LAX	1/0	N/A
VITKO ONE	VITKOONE	SID	Conventional	NKX	3/0	N/A
VVERA ONE	HAYEZ FOUR	SID	RNAV	VNY	2/0	Flexibility, Predictability
	VAN NUYS ONE	SID	RNAV	BUR		Flexibility, Predictability
WAYVE ONE	KIMMO FOUR	STAR	RNAV	LAX, SMO	4/0	Flexibility, Predictability
WEESL ONE	LYNXX EIGHT	STAR	RNAV	BUR, VNY	2/0	Flexibility, Segregation
WLKKR ONE	CANOGA ONE	SID	RNAV	VNY	3/1	Flexibility, Predictability, Segregation
WNNDY ONE	GORMAN FIVE	SID	RNAV	LAX	3/2	Flexibility, Predictability, Segregation
ZIGGY FIVE	ZIGGY FOUR	STAR	Conventional	ONT	4/2	Segregation
ZILLI THREE	ZILLI TWO	SID	RNAV	LAX	2/4	Predictability
ZOOMM ONE	SENIC ONE	SID	RNAV	LGB	5/0	Flexibility, Predictability, Segregation
ZUUMA ONE	MOORPARK THREE	STAR	RNAV	LAX	2/1	Flexibility, Predictability, Segregation

Figure 4: Example of Environmental Assessment Description of Proposed Action[13]

[13] Draft EA at 3-24 [AR 2-A-4; JA ___].

The Draft Environmental Assessment's maps were not much more helpful. FAA attempted to show all of the 179 changed or added routes on one 11 x 17 inch sheet of paper and a 17-megabyte Adobe Portable Document Format file. *See* Draft EA at Figure 3-8 [AR 2-A-4]. This map was overlaid on an area about 140 miles tall from the Mexican border to Santa Barbara, and almost 230 miles wide from the Pacific Ocean to the Mojave Desert. *Id.* On the electronic version, for those members of the public with sufficient computer capacity and bandwidth to open and manipulate the 17-megabyte file, they could try to turn on or off "layers" on the map showing blobs that contained where each of the more than 100 routes would be. *Id.* and Figure 1, *infra*.

There was no guidance regarding how members of the public should determine which of the 179 all-capital-letter code-named routes were of interest to their home or area. *See* Draft EA Chapter 3 [AR 2-A-4; JA ___]. And, the map only showed wide corridors in which a proposed route was contained, not the actual route itself. *Id.* at 3-27, Figure 3-8. These corridors were 5 to10 miles wide, within which the precise Next Generation "RNAV" or "RNP" route would be somewhere

located. *Id.* at Figure 3-8. Yet, elsewhere in its Environmental Assessment, FAA acknowledged that 90% of aircraft flying its routes would be within a half-mile of the route centerline. *Id.* at F-23. This meant that FAA's depicted corridors were many times wider than where most aircraft would actually fly, hiding the true location from concerned members of the public. And, to determine changes from the *status quo*, this challenging "Proposed Action" map had to be compared to another similar, but separate, map showing the "No Action" existing routes. Draft EA at Exhibits 3-7, 3-8 [AR 2-A-4; JA ___]. Finding where routes were proposed to change at a neighborhood scale relative to one's home, school, church, or park was impossible.

FAA's materials confounded, rather than clarified, whether a property would be affected, either positively or negatively. For example, using the IRNMN, HUULL, and RYDRR routes that include the "CLIFY" waypoint identified in Petitioners' brief, it was a challenge to the general public to ascertain whether any home is overflown by either the Proposed Action or No Action routes. The City encourages the Court to try to discern how routes would change with the "Proposed

Action" scenario for IRNMN in Los Angeles south of Interstate 10 in Los Angeles. Draft EA at Figures 3-7, 3-8 [AR 2-A-4; JA ___].

C. FAA's Attempts To Add Detail After the Draft Environmental Assessment Did Not Address the NEPA Deficiencies

The maps FAA used during a public workshop in Los Angeles on June 18, 2015, provided better information for the public regarding how routes would change at the neighborhood scale within which people actually live. FAA provided maps at this workshop of certain individual route procedures (IRNMN and HUULL, but not RYDRR) overlaid on Google Maps aerial photographs of the area, and posted these maps on its website in five files of up to 37 megabytes each. *See* AR 7-F-3-1; Final EA at A-573-75 [AR 1-B-7; JA ___].

However, interested residents either had to attend the public workshop or know to scroll down the FAA's website to open the right files, which were located well below the Environmental Assessment files. *Id.* at A-668-669. And, residents would have had to have sufficient computer and internet resources to download and use 37-, 29- and 24-megabyte files. Once downloaded, the residents would have to

locate their home's location underneath a mess of blue, yellow, white, and black lines, which themselves obscured entire neighborhoods in the underlying map.

The City and other parties provided comments in September 2015 regarding the need to better describe the FAA's action and the noise effects on communities. Comment Letter from Los Angeles World Airports Executive Director Deborah Flint at 2 (Sept. 4, 2015), Final EA at F-632-33 [AR I-B-12; JA ___]; LAX Community Noise Roundtable Comment Letter at 5 (Sept. 2, 2015), *id.* at F-595, -599. The City stressed that FAA needed to include this information in the Draft Environmental Assessment to facilitate public use and engagement.[14] *Id.* at F-633. The LAX Community Noise Roundtable concluded that the "Draft EA provides insufficient information for community members to assess potential adverse noise impacts on their specific community proposed by the proposed changes." *Id.* at F-595, -599. Despite this

[14] Consistent with Petitioners' brief (see pages 55-58), the City also called for FAA to use the California Noise Equivalent Metric that the public is used to seeing in airport-related environmental documents in Los Angeles and elsewhere. Final EA at F-632 [AR I-B-12; JA ___].

assessment, FAA never amended or supplemented the Environmental Assessment to include this most basic information.

As noted in Petitioner's brief, FAA did extend the deadline for comments on July 9, 2015. Final EA at A-653 to -54 [AR I-B-7; JA ___]. It then extended the deadline again on September 8, 2015. *Id.* at A-697. During this period, FAA included some additional material on its website, as discussed below, but did not reference the additional information in the extension notices. Instead, FAA again "encourage[d] interested parties to review *the EA*, and provide written comments…" *Id.* at A-653-54, A-697 (emphasis added).

Near the end of the comment period, FAA added some additional information resources showing flight tracks and noise levels on a local level to its website.[15] Final EA at A-713 to -727, -727 [AR 1-B-7; JA ___]. If members of the public happened upon these additional resources, they could link to computer files within a Google Maps application to see routes and some noise information. For technically-

[15] FAA did reference these new resource documents in a September "invitation" to local governments, but not to the general public. Final EA at A-748-49.

proficient individuals with good computers and internet capacity, these files provided higher resolution images of flight track locations, allowing users to see how they would be located relative to individual houses and streets.[16] However, FAA's website warned that the files were large and required good internet connections.[17] Further, the files required users to have underlying Google Earth software and digest an eight-minute video tutorial to use, on top of long download times.

While helpful for some of the public, these measures did not provide plain, clear, and easy-to-access information, particularly for less advantaged parts of the community such as low-income communities without access to the same technical skills, computer equipment, and high-speed internet. *See* FAA Order 1050.1E ¶ 209d [AR 9-A-11; JA ___] (FAA must provide members of minority populations and low-income populations access to public information concerning the human health or environmental impacts of the proposed action).

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[16] The Court can try these files itself, which are at AR 8-A-1, 8-A-2, and 8-A-3, or still on FAA's website at: http://www.metroplexenvironmental.com/socal_metroplex/socal_docs.html#ge .

[17] *Id.*

D. The Environmental Assessment Also Failed To Communicate How the Routes Would Affect Historic Properties and Parks

The inability to understand the impact of proposed routes was even greater for historic resources and parks, which are accorded special protections under the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act. 54 U.S.C. § 306101, *et seq.* ("Preservation Act"); 49 U.S.C. § 303(c) (Section 4(f)). In addition to the inability to readily determine the location of the routes, FAA's maps in the Environmental Assessment did not identify particular historic resources and parks. *See* Draft EA at 4-16 to -18, Figures 4-4, 4-5 [AR 2-A-5; JA ___]. FAA's few maps routinely sacrificed depth for breadth. The 11 x 17 inch map to cover all of Southern California did not permit users to see where the identified resources were located on a street grid, or at any other useful level of detail. *Id.*

FAA did send a list of National Register of Historic Places properties in the study area to the State Historic Preservation Officer ("SHPO"). Final EA at PDF pages 293-322 [AR I-B-7; JA ___].

However, this list did not correspond to the labels for modeled properties in FAA's noise modeling report, necessitating laborious and technical cross-referencing of 600 pages of points using GPS coordinates. *Compare id.* and *Aircraft Noise Technical Report* Table 2 [AR 3-A-3; JA ___] Further, this list was incomplete, because the standard FAA was required to apply under the Preservation Act was for whether properties were National Register-*eligible*, not just actually listed. *See e.g.*, 36 C.F.R. § 800.4(c); 49 U.S.C. § 303(c) (Section 4(f) protects historic sites and parks of local significance, as determined by local officials with jurisdiction over the resources). FAA never directed the State Historic Preservation Officer to identify properties that are National Register-eligible. *See* Final EA, Appendix A, Section A.3 [AR 1-B-7; JA ___].

Even more troublingly, FAA failed to comply with its duty under Part 106 of the Preservation Act to consult with local historic officials such as the Los Angeles Office of Historic Resources, as required by the Part 106 regulations. 36 C.F.R. § 800.2(a)(4), (c)(3); *City of Phoenix v. Huerta*, 869 F.3d 963, 971 (D.C. Cir. 2017) ("agencies must consult with

certain stakeholders in the potentially affected areas, including representatives of local governments"). FAA's Section 106 consultation record makes clear that it only consulted with the SHPO and tribal historic officials; only the State and tribal officials received Section 106 consultation letters. Final EA at A-289, *et seq.* [AR I-B-7; JA ___].

Because FAA did not comply with its nondiscretionary duty to consult with local historic officials, there was no opportunity for these officials to identify National Register-eligible properties, uniquely noise sensitive properties, etc. *Id.* ("FAA's failure to notify and provide documentation to the City of the agency's finding of no adverse impact violated regulations under the Preservation Act, and denied the City its right to participate in the [Preservation Act] process and object to the FAA's findings.")

III. FAA ULTIMATELY IMPLEMENTED ROUTES THAT DIFFERED FROM THOSE IT IDENTIFIED IN THE DRAFT ENVIRONMENTAL ASSESSMENT AND ITS NOISE ANALYSIS

Even if members of the public could navigate the voluminous and confusing set of materials regarding the Proposed Action, they would have not gotten a full understanding of the noise impacts, because FAA implemented the Metroplex in a manner different from what it disclosed in the Environmental Assessment and modeled for noise purposes. Petitioners' Brief identifies flaws in the FAA's Environmental Assessment and noise analysis associated with a shift in the "CLIFY" waypoint used in the heavily-used IRNMN, HUULL, and RYDRR arrival routes into LAX. Petitioners' Brief at 58-60. [18] These

[18] Although the City agrees that the FAA's noise analysis was flawed, the City does not agree with Petitioners' proffered cumulative impact arguments. *See* Petitioners' Brief at 69-74. Petitioners' argument that the Metroplex should have included consideration of a City Specific Plan Amendment Study completed in 2013 is based on incorrect assertions. For example, the Study cited in the brief reflects no approval by FAA; it was a purely local action by the City. *See* Petitioners' Brief at 72 (claiming FAA approval); Petitioners' Request for Judicial Notice at Exhibits A-C. FAA will need to approve any runway changes from the Study and consider them under NEPA, which the City has not requested. Further, while the City did conduct California Environmental Quality Act ("CEQA") review for Study, it made clear that this was only on a high-level programmatic review and

flaws are exacerbated by the fact that FAA is not implementing minimum altitudes for these routes in the manner that it stated that it would in the Environmental Assessment process.

During the course of the public comment period, FAA showed that aircraft arriving to LAX on these routes would fly at an altitude of 6,000 feet or higher at a critical point in Los Angeles called the "DAHJR" waypoint. *See* Final EA at A-575 (public presentation of routes at June 18, 2015, public workshops); *Id.* at A-714-18 [AR I-B-7; JA ___] (FAA website link to FAA "TARGETS" model files for IRNMAN, HUULL and RYDRR); AR at 5-A-28-3, 5-A-60-3; JA ___] (TARGETS files for IRNMAN and HUULL showing minimum altitudes of 6,000 feet at DAHJR). And, FAA indicated that its noise analysis was based on these altitude assumptions, with higher altitude meaning less noise, all

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any implementation would require more specific project-level review. *See* Final EA at F-772. No such project-level review has been initiated by the City for any runway projects. The City's airport CEQA website lists all environmental reviews underway and does not include the runway or other projects identified by Petitioners: https://www.lawa.org/en/lawa-our-lax/environmental-documents/current-projects.

things being equal. *See Aircraft Noise Technical Report* at 3-64 (August 2016) [AR 3-A-4; JA ___].

But FAA has not implemented the routes as it disclosed it would. The IRNMAN, HUULL and RYDRR routes were designed to feed into other "Required Navigation Performance" (referred to in FAA's documents as "RNP") for their final approach into LAX. *See* Final EA at A-573, 575 [AR 1-A-7; JA ___]. Despite its originally-disclosed design, FAA has not enabled this connection, because it has not deployed a critical air traffic control software tool called the Terminal Sequencing and Spacing tool. *See LAX Community Noise Roundtable Recap* for May 10, 2017 at 2-3.[19] FAA's Regional Administrator informed the City and the City-facilitated LAX Community Noise Roundtable about this delay in May 2017, but has not undertaken any additional noise analysis or supplemental NEPA work to address the

[19] See https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_recaps/noise_management_recaps/noisert_170510_recap.ashx?la=en&hash=EBDF17EA5C7D03EB07903FD0FD3328A6383F8269. Minutes of all LAX Community Roundtable meetings are prepared and kept as public records on the City's airport website. FAA participates in the Roundtable meetings.

effects of flying routes differently than portrayed in the Environmental Assessment. *Id.*

Thus, more than two thirds of the aircraft flying the IRNMN, HUULL, and RYDRR routes are below the "minimum" 6,000 foot altitude at the DAHJR waypoint in Los Angeles.[20] This altitude mismatch, along with the location concerns identified by Petitioners (Brief at 58-60) and concentration of flight tracks, means noise is being focused in new areas north of the pre-Metroplex flight tracks and at levels greater than assumed in the Environmental Assessment noise analysis. These locations of focused noise correspond with the locations of increased noise complaints to the City from aircraft operations. *See* Figure 3. FAA must supplement and reconsider its Metroplex Environmental Assessment based on its own changes to the Metroplex

[20] *LAX North Downwind Arrivals at DAHJR Waypoint Before and After Metroplex Implementation* at 13, https://www.lawa.org/-/media/lawa-web/environment/lax-community-noise-roundtable/noise_management_presentations/noise_management_presentation/noisert_170913-dahjr-altitude-analysis.ashx?la=en&hash=F6C623B1F8038F97AA174354E42C6B5370638995. As noted in footnote 12, this data and map were produced by City staff using FAA radar data as public records.

implementation, as compared to what was disclosed to the public. *See* 40 C.F.R. § 1502.9(c) (agencies must develop supplemental statements if "the agency makes substantial changes in the proposed action that are relevant to environmental concerns"); FAA Order 1050.1E, ¶¶ 410-411 (FAA must prepare written reevaluation and/or supplement to environmental assessment if there are changes to the action or changed information affecting environmental analysis).

CONCLUSION

The City agrees with Petitioners that Court should remand the Metroplex Environmental Assessment to FAA to address the deficiencies in the NEPA process. At a minimum, on remand FAA must provide clearer information to the public regarding FAA's action and its impacts. FAA can readily do so by providing more accessible maps and descriptions of its actions, by neighborhood, in a user-friendly manner. Second, FAA must address the actual flight routes that aircraft will use – including accurate altitudes – in its noise analysis. Third, FAA should take a hard look at measures to minimize and mitigate the noise effects of the Metroplex. This should include effective minimum

altitude requirements, routing to minimize direct overflights of residential areas, and measures to eliminate or address the effects of concentrating operations on very narrow flight corridors.

Dated: March 23, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the word limit imposed by this Court's Rules, and contains 5,561 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

Dated: March 23, 2018

/ s / David J. Michaelson
David J. Michaelson

CERTIFICATE OF SERVICE

I hereby certify, that on March 23, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: March 23, 2018

/ s / David J. Michaelson
David J. Michaelson

ORAL ARGUMENT NOT YET SCHEDULED

Nos. 16-1366, 16-1377, 16-1378,
17-1010, 17-1029 (Consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BENEDICT HILLS ESTATES ASSOCIATION, *et al.*,
Petitioners

v.

FEDERAL AVIATION ADMINISTRATION, *et al.*,
Respondents

On petition for review of an action by
the Federal Aviation Administration
49 U.S.C. § 46110

ADDENDUM TO BRIEF OF THE CITY OF LOS ANGELES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS (STATUTES, REGULATIONS, AND OTHER LEGAL AUTHORITIES)

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Addendum A

Except for the following, all applicable statutes, regulations, and agency orders, are contained in the Brief for Petitioners or are contained within the Administrative Record.

Federal Statutes

Federal Regulations

FAA Orders

Municipal Law

49 USCS § 303

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 49. TRANSPORTATION > SUBTITLE I. DEPARTMENT OF TRANSPORTATION > CHAPTER 3. GENERAL DUTIES AND POWERS > SUBCHAPTER I. DUTIES OF THE SECRETARY OF TRANSPORTATION

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) Approval of programs and projects. Subject to subsections (d) and (h), the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if--

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(d) De minimis impacts.

(1) Requirements.

(A) Requirements for historic sites. The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) Requirements for parks, recreation areas, and wildlife or waterfowl refuges. The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) Criteria. In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or

enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) Historic sites. With respect to historic sites, the Secretary may make a finding of de minimis impact only if--

(A) the Secretary has determined, in accordance with the consultation process required under section 306108 of title 54, United States Code, that--

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) Parks, recreation areas, and wildlife or waterfowl refuges. With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if--

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(e) Satisfaction of requirements for certain historic sites.

(1) In general. The Secretary shall--

(A) align, to the maximum extent practicable, the requirements of this section with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 306108 of title 54 [54 USCS § 306108], including implementing regulations; and

(B) not later than 90 days after the date of enactment of this subsection [enacted Dec. 4, 2015], coordinate with the Secretary of the Interior and the Executive Director of the Advisory Council on Historic Preservation (referred to in this subsection as the "Council") to establish procedures to satisfy the requirements described in subparagraph (A) (including regulations).

(2) Avoidance alternative analysis.

(A) In general. If, in an analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary determines that there is no feasible or prudent alternative to avoid use of a historic site, the Secretary may--

(i) include the determination of the Secretary in the analysis required under that Act [42 USCS §§ 4321 et seq.];

(ii) provide a notice of the determination to--

(I) each applicable State historic preservation officer and tribal historic preservation officer;

(II) the Council, if the Council is participating in the consultation process under section 306108 of title 54 [54 USCS § 306108]; and

(III) the Secretary of the Interior; and

(iii) request from the applicable preservation officer, the Council, and the Secretary of the Interior a concurrence that the determination is sufficient to satisfy subsection (c)(1).

(B) Concurrence. If the applicable preservation officer, the Council, and the Secretary of the Interior each provide a concurrence requested under subparagraph (A)(iii), no further analysis under subsection (c)(1) shall be required.

(C) Publication. A notice of a determination, together with each relevant concurrence to that determination, under subparagraph (A) shall--

(i) be included in the record of decision or finding of no significant impact of the Secretary; and

(ii) be posted on an appropriate Federal website by not later than 3 days after the date of receipt by the Secretary of all concurrences requested under subparagraph (A)(iii).

(3) Aligning historical reviews.

(A) In general. If the Secretary, the applicable preservation officer, the Council, and the Secretary of the Interior concur that no feasible and prudent alternative exists as described in paragraph (2), the Secretary may provide to the applicable preservation officer, the Council, and the Secretary of the Interior notice of the intent of the Secretary to satisfy subsection (c)(2) through the consultation requirements of section 306108 of title 54 [54 USCS § 306108].

(B) Satisfaction of conditions. To satisfy subsection (c)(2), the applicable preservation officer, the Council, and the Secretary of the Interior shall concur in the treatment of the applicable historic site described in the memorandum of agreement or programmatic agreement developed under section 306108 of title 54 [54 USCS § 306108].

(f) References to past transportation environmental authorities.

(1) Section 4(f) requirements. The requirements of this section are commonly referred to as section 4(f) requirements (see section 4(f) of the Department of Transportation Act (Public Law 89-670; 80 Stat. 934) as in effect before the repeal of that section).

(2) Section 106 requirements. The requirements of section 306108 of title 54 [54 USCS § 306108] are commonly referred to as section 106 requirements (see section 106 of the National Historic Preservation Act of 1966 (Public Law 89-665; 80 Stat. 917) as in effect before the repeal of that section).

(g) Bridge exemption from consideration. A common post-1945 concrete or steel bridge or culvert (as described in 77 Fed. Reg. 68790) that is exempt from individual review under section 306108 of title 54 [54 USCS § 306108] shall be exempt from consideration under this section.

(h) Rail and transit.

(1) In general. Improvements to, or the maintenance, rehabilitation, or operation of, railroad or rail transit lines or elements thereof that are in use or were historically used for the transportation of goods or passengers shall not be considered a use of a historic site under subsection (c), regardless of whether the railroad or rail transit line or element thereof is listed on, or eligible for listing on, the National Register of Historic Places.

(2) Exceptions.

(A) In general. Paragraph (1) shall not apply to--

(i) stations; or

(ii) bridges or tunnels located on--

(I) railroad lines that have been abandoned; or

(II) transit lines that are not in use.

(B) Clarification with respect to certain bridges and tunnels. The bridges and tunnels referred to in subparagraph (A)(ii) do not include bridges or tunnels located on railroad or transit lines--

(i) over which service has been discontinued; or

(ii) that have been railbanked or otherwise reserved for the transportation of goods or passengers.

History

(Jan. 12, 1983,P.L. 97-449, § 1(b), 96 Stat. 2419; April 2, 1987, P.L. 100-17, Title I, § 133(d), 101 Stat. 173; Aug. 10, 2005, P.L. 109-59, Title VI, § 6009(a)(2), 119 Stat. 1875.)

(As amended Dec. 19, 2014,P.L. 113-287, § 5(p), 128 Stat. 3272; Dec. 4, 2015, P.L. 114-94, Div A, Title I, Subtitle C, §§ 1301(b), 1302(b), 1303(b), Title XI, Subtitle E, § 11502(b), 129 Stat. 1376, 1377, 1378, 1690.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
303(a)	49:1651(b)(2).	Oct. 15, 1966, Pub. L. 89-670, Sec. 2(b) (2), 80 Stat. 931.
	49:1653(f)(1st	Oct. 15, 1966, Pub. L. 89-670,

sentence). Sec. 4(f), 80 Stat. 934;

restated Aug. 23, 1968,

Pub. L. 90-495, Sec.

18(b), 82 Stat. 824.

303(b) .....… 49:1653(f)(2d sentence).

303(c) .....… 49:1653(f)(less 1st, 2d sentences).

In subsection (a), the words "hereby declared to be" before "the policy" are omitted as surplus. The words "of the United States Government" are substituted for "national" for clarity and consistency.

In subsection (b), the words "crossed by transportation activities or facilities" are substituted for "traversed" for clarity.

In subsection (c), before clause (1), the words "After August 23, 1968" after "Secretary" are omitted as executed. The word "transportation" is inserted before "program" for clarity. In clause (2), the words "or project" are added for consistency.

End of Document

49 USCS § 47503

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 49. TRANSPORTATION > SUBTITLE VII. AVIATION PROGRAMS > PART B. AIRPORT DEVELOPMENT AND NOISE > CHAPTER 475. NOISE > SUBCHAPTER I. NOISE ABATEMENT

§ 47503. Noise exposure maps

(a) Submission and preparation. An airport operator may submit to the Secretary of Transportation a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during a forecast period that is at least 5 years in the future and how those operations will affect the map. The map shall--

(1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and

(2) comply with regulations prescribed under section 47502 of this title [49 USCS § 47502].

(b) Revised maps. If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction.

History

(July 5, 1994,P.L. 103-272, § 1(e), 108 Stat. 1284; Dec. 12, 2003, P.L. 108-176, Title III, Subtitle B, § 324, 117 Stat. 2542.)

Prior law and revision:

Revised Section Source (U.S. Code)	Source (Statutes at Large)
47503(a).… 49 App.:2103(a)(1).	Feb. 18, 1980, Pub. L. 96-193, Sec. 103(a), 94 Stat. 50.
47503(b).… 49 App.:2103(a)(2).	

In subsection (a), before clause (1), the words "After the effective date of the regulations promulgated in accordance with section 2102 of this Appendix" are omitted as executed. The words "of an airport" and "at such airport" are omitted as surplus. The word "how" is substituted for "the ways, if any, in which" to eliminate unnecessary words. In clause (1), the words "planning authorities" are substituted for "planning agencies" for consistency.

In subsection (b), the words "to the Secretary" are added for clarity. The words "after the submission to the Secretary of a noise exposure map under paragraph (1)" are omitted as surplus.

End of Document

49 USCS § 47504

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 49. TRANSPORTATION > SUBTITLE VII. AVIATION PROGRAMS > PART B. AIRPORT DEVELOPMENT AND NOISE > CHAPTER 475. NOISE > SUBCHAPTER I. NOISE ABATEMENT

§ 47504. Noise compatibility programs

(a) Submissions.

(1) An airport operator that submitted a noise exposure map and related information under section 47503(a) of this title [49 USCS § 47503(a)] may submit a noise compatibility program to the Secretary of Transportation after--

(A) consulting with public agencies and planning authorities in the area surrounding the airport, United States Government officials having local responsibility for the airport, and air carriers using the airport; and

(B) notice and an opportunity for a public hearing.

(2) A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include--

(A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; and

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport operations.

(b) Approvals.

(1) The Secretary shall approve or disapprove a program submitted under subsection (a) of this section (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) not later than 180 days after receiving it. The Secretary shall approve the program (except as the program is related to flight procedures referred to in subsection (a)(2)(D)) if the program--

(A) does not place an unreasonable burden on interstate or foreign commerce;

(B) is reasonably consistent with achieving the goal of reducing noncompatible uses and preventing the introduction of additional noncompatible uses; and

(C) provides for necessary revisions because of a revised map submitted under section 47503(b) of this title [49 USCS § 47503(b)].

(2) A program (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) is deemed to be approved if the Secretary does not act within the 180-day period.

(3) The Secretary shall submit any part of a program related to flight procedures referred to in subsection (a)(2)(D) of this section to the Administrator of the Federal Aviation Administration. The Administrator shall approve or disapprove that part of the program.

(4) The Secretary shall not approve in fiscal years 2004 through 2007 a program submitted under subsection (a) if the program requires the expenditure of funds made available under section 48103 [49 USCS § 48103] for mitigation of aircraft noise less than 65 DNL.

(c) Grants.

(1) The Secretary may incur obligations to make grants from amounts available under section 48103 of this title [49 USCS § 48103] to carry out a project under a part of a noise compatibility program approved under subsection (b) of this section. A grant may be made to--

(A) an airport operator submitting the program; and

(B) a unit of local government in the area surrounding the airport, if the Secretary decides the unit is able to carry out the project.

(2) Soundproofing and acquisition of certain residential buildings and properties. The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title [49 USCS § 48103]--

(A) for projects to soundproof residential buildings--

(i) if the airport operator received approval for a grant for a project to soundproof residential buildings pursuant to section 301(d)(4)(B) of the Airport and Airway Safety and Capacity Expansion Act of 1987;

(ii) if the airport operator submits updated noise exposure contours, as required by the Secretary; and

(iii) if the Secretary determines that the proposed projects are compatible with the purposes of this chapter [49 USCS §§ 47501 et seq.];

(B) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof residential buildings located on residential properties, and to acquire residential properties, at which noise levels are not compatible with normal operations of an airport--

(i) if the airport operator amended an existing local aircraft noise regulation during calendar year 1993 to increase the maximum permitted noise levels for scheduled air carrier aircraft as a direct result of implementation of revised aircraft noise departure procedures mandated for aircraft safety purposes by the Administrator of the Federal Aviation Administration for standardized application at airports served by scheduled air carriers;

(ii) if the airport operator submits updated noise exposure contours, as required by the Secretary; and

(iii) if the Secretary determines that the proposed projects are compatible with the purposes of this chapter [49 USCS §§ 47501 et seq.];

(C) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the Secretary decides the program is substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter [49 USCS §§ 47501 et seq.] will be furthered by promptly carrying out the program;

(D) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof a building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the Secretary decides is adversely affected by airport noise; and

(E) to an airport operator of a congested airport (as defined in section 47175 [49 USCS § 47175]) and a unit of local government referred to in paragraph (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47175 [49 USCS § 47175]) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.

(3) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the Secretary decides the agency is able to carry out the project.

(4) The Government's share of a project for which a grant is made under this subsection is the greater of--

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 [49 USCS §§ 47101 et seq.] of this title for a project at the airport.

(5) The provisions of subchapter I of chapter 471 [49 USCS §§ 47101 et seq.] of this title related to grants apply to a grant made under this chapter [49 USCS §§ 47501 et seq.], except--

(A) section 47109(a) and (b) of this title [49 USCS § 47109(a)]; and

(B) any provision that the Secretary decides is inconsistent with, or unnecessary to carry out, this chapter [49 USCS §§ 47501 et seq.]

(6) Aircraft noise primarily caused by military aircraft. The Secretary may make a grant under this subsection for a project even if the purpose of the project is to mitigate the effect of noise primarily caused by military aircraft at an airport.

(d) Government relief from liability. The Government is not liable for damages from aviation noise because of action taken under this section.

(e) Grants for assessment of flight procedures.

(1) In general. In accordance with subsection (c)(1), the Secretary may make a grant to an airport operator to assist in completing environmental review and assessment activities for proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(2) Additional staff. The Administrator may accept funds from an airport operator, including funds provided to the operator under paragraph (1), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(3) Receipts credited as offsetting collections. Notwithstanding section 3302 of title 31, any funds accepted under this section--

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(B) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(C) shall remain available until expended.

(f) Determination of fair market value of residential properties. In approving a project to acquire residential real property using financial assistance made available under this section or chapter 471 [49 USCS §§ 47101 et seq.], the Secretary shall ensure that the appraisal of the property to be acquired disregards any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

History

(July 5, 1994,P.L. 103-272, § 1(e), 108 Stat. 1285; Aug. 23, 1994, P.L. 103-305, Title I, § 119, 108 Stat. 1580; Oct. 31, 1994, P.L. 103-429, § 6(71), 108 Stat. 4387; April 5, 2000, P.L. 106-181, Title I, Subtitle C, § 154, 114 Stat. 88; Dec. 12, 2003, P.L. 108-176, Title I, Subtitle D, § 189, Title III, Subtitle A, § 306, 117 Stat. 2519, 2539.)

(As amended Feb. 14, 2012,P.L. 112-95, Title V, §§ 504, 505, 126 Stat. 104.)

Prior law and revision:

Pub. L. 103-272

Revised Section Source (U.S. Code) Source (Statutes at Large)

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47504(a).… 49 App.:2104(a).   Feb. 18, 1980, Pub. L. 96-193,
                      Sec. 104(a), 94 Stat. 51; Dec.
                      30, 1987, Pub. L. 100-223,
                      Sec. 301(a), 101 Stat. 1523.
47504(b).… 49 App.:2104(b).   Feb. 18, 1980, Pub. L. 96-193,
                      Sec. 104(b), (d), 94 Stat. 52,
                      53.
47504(c).… 49 App.:2104(c).   Feb. 18, 1980, Pub. L. 96-193,
                      Sec. 104(c), 94 Stat. 52; Sept.
                      3, 1982, Pub. L. 97-248, Sec.
                      524(b)(4), 96 Stat. 696; Dec.
                      30, 1987, Pub. L. 100-223, Sec.
                      301(b), (c), 101 Stat. 1523;
                      Oct. 28, 1991, Pub. L. 102-143,
                      Sec. 336, 105 Stat. 947.
47504(d).… 49 App.:2104(d).
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In subsection (a)(1)(A), the words "the officials of" are omitted as surplus. The words "planning authorities" are substituted for "planning agencies" for consistency.

In subsection (a)(2)(A), the word "establishing" is substituted for "the implementation of" for consistency.

In subsection (a)(2)(B), the words "the implementation of" are omitted as surplus.

In subsection (b)(1), before clause (A), the words "to him" and "the measures to be undertaken in carrying out" are omitted as surplus. In clause (B), the word "achieving" is substituted for "obtaining" for clarity. The word "existing" is omitted as surplus.

Subsection (b)(2) is substituted for 49 App.:2104(b) (3d sentence) to eliminate unnecessary words.

In subsection (c)(1)(B) and (2), the words "for which grant applications are made in accordance with such noise compatibility programs" are omitted as surplus.

In subsection (c)(1), before clause (A), the words "incur obligations to" and "further . . . under this section" are omitted as surplus. In clause (C), the words "to carry out any part of a program" are substituted for "any project to carry out a noise compatibility program", and the words "or before implementing regulations were prescribed" are substituted for "or the promulgation of its implementing regulations", for clarity and consistency. The words "the purposes of" before "reducing" are omitted as surplus. The word "noncompatible" is added after "existing" for clarity and consistency. In clause (D), the words "for any project" and "determined to be" are omitted as surplus.

In subsection (c)(2), the words "in turn" are omitted as surplus.

In subsection (c)(4), before clause (A), the words "All of" and "made under section 505 of that Act" are omitted as surplus. The word "except" is substituted for "unless" for clarity. In clause (1), the words "relating to United States share of project costs" are omitted as surplus. In clause (2), the words "the purposes of" are omitted as surplus.

In subsection (d), the words "by the Secretary or the Administrator of the Federal Aviation Administration" are omitted as surplus.

Pub. L. 103-429

This redesignates 49:47504(c)(1)(C) and (D) as 49:47504(c)(2)(C) and (D) because the subject matter is similar to that of 49:47504(c)(2)(A) and (B) that was added by section 119(2) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103-305, 108 Stat. 1580).

End of Document

49 USCS § 47505

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 49. TRANSPORTATION > SUBTITLE VII. AVIATION PROGRAMS > PART B. AIRPORT DEVELOPMENT AND NOISE > CHAPTER 475. NOISE > SUBCHAPTER I. NOISE ABATEMENT

§ 47505. Airport noise compatibility planning grants

(a) General authority. The Secretary of Transportation may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit--

(1) a noise exposure map and related information under section 47503 of this title [49 USCS § 47503], including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title [49 USCS § 47504].

(b) Availability of amounts and Government's share of costs. A grant under subsection (a) of this section may be made from amounts available under section 48103 of this title [49 USCS § 48103]. The United States Government's share of the grant is the percent for which a project for airport development at an airport would be eligible under section 47109(a) and (b) of this title [49 USCS § 47109(a) and (b)].

History

(July 5, 1994,P.L. 103-272, § 1(e), 108 Stat. 1286.)

Prior law and revision:

Revised Section Source (U.S. Code)	Source (Statutes at Large)
47505.…. 49 App.:2103(b).	Feb. 18, 1980, Pub. L. 96-193, Sec. 103(b), 94 Stat. 51; restated Sept. 3, 1982, Pub. L. 97-248, Sec. 524(b)(3), 96 Stat. 696.

In subsection (a), before clause (1), the words "incur obligations to" are omitted as surplus.

End of Document

54 USCS § 306108

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306108. Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306108 …	16 U.S.C. 470f	Pub. L. 89-665, title I, Sec. 106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94-422, title II, Sec. 201(3), Sept. 28, 1976, 90 Stat. 1320.

The words "historic property" are substituted for "district, site, building, structure, or object that is included in or eligible for inclusion in the National Register" because of the definition of "historic property" in section 300308 of the new title.

End of Document

54 USCS § 306109

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306109. Costs of preservation as eligible project costs

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306109 …	16 U.S.C. 470h-2(g)	Pub. L. 89-665, title I, Sec. 110(g), as added Pub. L. 96-515, title II, Sec. 206, Dec. 12, 1980, 94 Stat. 2996.

End of Document

54 USCS § 306110

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306110. Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed $ 1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306110 …	16 U.S.C. 470h-2(h)	Pub. L. 89-665, title I, Sec. 110(h), as added Pub. L. 96-515, title II, Sec. 206, Dec. 12, 1980, 94 Stat. 2997.

The words "historic property" are substituted for "historic resources" for consistency because the defined term in the new division is "historic property".

End of Document

54 USCS § 306111

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306111. Environmental impact statement

Nothing in this division [54 USCS §§ 300101 et seq.] shall be construed to--

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306111 …	16 U.S.C. 470h-2(i)	Pub. L. 89-665, title I, Sec. 110(i), as added Pub. L. 96-515, title II, Sec. 206, Dec. 12, 1980, 94 Stat. 2997.

End of Document

54 USCS § 306112

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306112. Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this subchapter (except section 306108) [54 USCS §§ 306101-306107, 306109-306114] may be waived in whole or in part in the event of a major natural disaster or an imminent threat to national security.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306112 …	16 U.S.C. 470h-2(j)	Pub. L. 89-665, title I, Sec. 110(j), as added Pub. L. 96-515, title II, Sec. 206, Dec. 12, 1980, 94 Stat. 2997.

End of Document

54 USCS § 306113

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306113. Anticipatory demolition

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of section 306108 of this title [54 USCS § 306108], has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3227.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306113…	16 U.S.C. 470h-2(k)	Pub. L. 89-665, title I, Sec. 110(k), as added Pub. L. 102-575, title XL, Sec. 4012(3), Oct. 30, 1992, 106 Stat. 4760.

End of Document

54 USCS § 306114

Current through PL 115-137, approved 3/16/18

United States Code Service - Titles 1 through 54 > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS > SUBTITLE III. NATIONAL PRESERVATION PROGRAMS > PART A. HISTORIC PRESERVATION > SUBPART 5. FEDERAL AGENCY HISTORIC PRESERVATION RESPONSIBILITIES > CHAPTER 3061. PROGRAM RESPONSIBILITIES AND AUTHORITIES > SUBCHAPTER I. IN GENERAL

§ 306114. Documentation of decisions respecting undertakings

With respect to any undertaking subject to section 306108 of this title [54 USCS § 306108] that adversely affects any historic property for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of the agency shall document any decision made pursuant to section 306108 of this title [54 USCS § 306108]. The head of the agency may not delegate the responsibility to document a decision pursuant to this section. Where an agreement pursuant to regulations issued by the Council has been executed with respect to an undertaking, the agreement shall govern the undertaking and all of its parts.

History

(Dec. 19, 2014,P.L. 113-287, § 3, 128 Stat. 3228.)

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
306114…	16 U.S.C. 470h-2(l)	Pub. L. 89-665, title I, Sec. 110(l), as added Pub. L. 102-575, title XL, Sec. 4012(3), Oct. 30, 1992, 106 Stat. 4761; Pub. L. 106-208, Sec. 5(a)(8), May 26, 2000, 114 Stat. 319.

The words "historic property" are substituted for "property included in or eligible for inclusion in the National Register" because of the definition of "historic property" in section 300308 of the new title. The words "to document a decision pursuant to this section" are substituted for "pursuant to such section" for clarity. The language was not intended to limit agency authority to delegate responsibilities under section 106 of the National Historic Preservation Act (§ Public Law 89-665, 80 Stat. 917). The words "agreement pursuant to regulations issued by the Council" are substituted for "a section 106 memorandum", and the word "agreement" is substituted for "memorandum", for clarity and for consistency in the new section.

End of Document

36 CFR 800.2

This document is current through the March 19, 2018 issue of the Federal Register. Title 3 is current through March 16, 2018.

Code of Federal Regulations* > *TITLE 36 -- PARKS, FORESTS, AND PUBLIC PROPERTY* > *CHAPTER VIII -- ADVISORY COUNCIL ON HISTORIC PRESERVATION* > *PART 800 -- PROTECTION OF HISTORIC PROPERTIES* > *SUBPART A -- PURPOSES AND PARTICIPANTS

§ 800.2 Participants in Section 106 process.

(a) Agency official. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) Professional standards. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) Lead Federal agency. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council

encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) Council. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) Council entry into the section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) Council assistance. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) Consulting parties. The following parties have consultative roles in the section 106 process.

(1) State historic preservation officer.

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) Indian tribes and Native Hawaiian organizations.

(i) Consultation on tribal lands.

(A) Tribal historic preservation officer. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) Tribes that have not assumed SHPO functions. When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or

affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations. Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all

aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) Representatives of local governments. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) Applicants for Federal assistance, permits, licenses, and other approvals. An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants t of apiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) Additional consulting parties. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) The public.

(1) Nature of involvement. The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) Providing notice and information. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in

lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

16 U.S.C. 470s.

History

[51 FR 31118, Sept. 2, 1986; 64 FR 27044, 27071, May 18, 1999; 65 FR 77698, 77726, Dec. 12, 2000]

End of Document

36 CFR 800.4

This document is current through the March 19, 2018 issue of the Federal Register. Title 3 is current through March 16, 2018.

Code of Federal Regulations* > *TITLE 36 -- PARKS, FORESTS, AND PUBLIC PROPERTY* > *CHAPTER VIII -- ADVISORY COUNCIL ON HISTORIC PRESERVATION* > *PART 800 -- PROTECTION OF HISTORIC PROPERTIES* > *SUBPART B -- THE SECTION 106 PROCESS

§ 800.4 Identification of historic properties.

(a) Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) Identify historic properties. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall

take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) Phased identification and evaluation. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) Evaluate historic significance.

(1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) Determine whether a property is eligible. If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) Results of identification and evaluation.

(1) No historic properties affected. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all

consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)

(A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) Historic properties affected. If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

16 U.S.C. 470s.

History

[51 FR 31118, Sept. 2, 1986; 64 FR 27044, 27074, May 18, 1999; 65 FR 77698, 77728, Dec. 12, 2000; 69 FR 40544, 40553, July 6, 2004]

End of Document

40 CFR 1500.2

This document is current through the March 19, 2018 issue of the Federal Register. Title 3 is current through March 16, 2018.

Code of Federal Regulations* > *TITLE 40 -- PROTECTION OF ENVIRONMENT* > *CHAPTER V -- COUNCIL ON ENVIRONMENTAL QUALITY* > *PART 1500 -- PURPOSE, POLICY, AND MANDATE

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Statutory Authority

NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

History

43 FR 55990, Nov. 28, 1978.

End of Document

40 CFR 1502.8

This document is current through the March 19, 2018 issue of the Federal Register. Title 3 is current through March 16, 2018.

Code of Federal Regulations* > *TITLE 40 -- PROTECTION OF ENVIRONMENT* > *CHAPTER V -- COUNCIL ON ENVIRONMENTAL QUALITY* > *PART 1502 -- ENVIRONMENTAL IMPACT STATEMENT

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Statutory Authority

NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

History

43 FR 55994, Nov. 29, 1978.

End of Document

40 CFR 1502.9

This document is current through the March 19, 2018 issue of the Federal Register. Title 3 is current through March 16, 2018.

Code of Federal Regulations > *TITLE 40 -- PROTECTION OF ENVIRONMENT* > *CHAPTER V -- COUNCIL ON ENVIRONMENTAL QUALITY* > *PART 1502 -- ENVIRONMENTAL IMPACT STATEMENT*

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Statutory Authority

NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

History

43 FR 55994, Nov. 29, 1978.

End of Document

Chapter 13. Airport Noise and Access Restrictions

13.1. Introduction and Responsibilities. This chapter contains guidance on the sponsor's responsibility with regard to restrictions on airport noise and access. Access restrictions have the potential to violate the federal obligation to make the airport available for public use on reasonable terms and without unjust discrimination as required by Grant Assurance 22, *Economic Nondiscrimination*.

It is the responsibility of the airports district offices (ADOs) and regional airports divisions to advise sponsors on the laws and policies that apply to access restrictions and to ensure that the sponsor extends equitable treatment to all of the airport's aeronautical users.

Airport Noise and Capacity Act of 1990 (ANCA) requires airport sponsors proposing restrictions on operations by Stage 2 or Stage 3 aircraft to conform to 14 CFR Part 161 Notice and Approval of Airport Noise and Access Restrictions. (Photo: FAA).

13.2. Background.

a. The legal framework with respect to abatement of aviation noise may be summarized as follows:

(1). The federal government has preempted the areas of airspace use and management, air traffic control, safety, and the regulation of aircraft noise at its source. The federal government also has substantial power to influence airport development through its administration of the Airport Improvement Program (AIP).

(2). Other powers and authorities to control aircraft noise rest with the airport proprietor – including the power to select an airport site, acquire land, assure compatible land use, and control airport design, scheduling and operations – subject to constitutional prohibitions against creation of an undue burden on interstate and foreign commerce, and unreasonable, arbitrary, and unjust discriminatory rules that advance the local interest, other statutory requirements, and interference with exclusive federal regulatory responsibilities over safety and airspace management.

(3). State and local governments may protect their citizens through land use controls and other police power measures not affecting airspace management or aircraft operations. In addition, to the extent they are airport proprietors, they have the powers described in paragraph (b)(2) below:

b. The authorities and responsibilities of the parties may be summarized as follows:

(1). The federal government has the authority and responsibility to control aircraft noise by the regulation of source emissions, by flight operational procedures, and by management of the air traffic control system and navigable airspace in ways that minimize noise impact on residential areas, consistent with the highest standards of safety and efficiency. The federal government also provides financial and technical assistance to airport proprietors for noise reduction planning and abatement activities and, working with the private sector, conducts continuing research into noise abatement technology.

(2). Airport sponsors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce.

(3). State and local governments and planning agencies should provide for land use planning and development, zoning, and housing regulations that are compatible with airport operations.

(4). Air carriers are responsible for retirement, replacement or retrofit for older jets that do not meet federal noise level standards, and for scheduling and flying airplanes in a way that minimizes the impact of noise on people.

(5). Air travelers and shippers generally should bear the cost of noise reduction, consistent with established federal economic and environmental policy that the costs of complying with laws and public policies should be reflected in the price of goods and services.

(6). Residents and prospective residents in areas surrounding airports should seek to understand the noise problem and what steps can be taken to minimize its effect on people. Individual and community responses to aircraft noise differ substantially and, for some individuals, a reduced level of noise may not eliminate the annoyance or irritation. Prospective residents of areas impacted by aircraft noise, thus, should be aware of the potential effect of noise on their quality of life and act accordingly.

Airport sponsors have limited proprietary authority to restrict access as a means of reducing aircraft noise impacts in order to improve compatibility with the local community. To accomplish this, airport sponsors must comply with the national program for review of airport noise and access restrictions under the Airport Noise and Capacity Act of 1990 (ANCA). ANCA requires that certain review and approval procedures be completed before a proposed restriction that impacts Stage 2 or Stage 3 aircraft is implemented. The FAA regulation that implements ANCA is 14 Code of Federal Regulations (CFR) Part 161, *Notice and Approval of Airport Noise and Access Restrictions*. An airport sponsor may use an airport noise compatibility study pursuant to 14 CFR Part 150 to fulfill certain notice and comment requirements under ANCA.

13.3. Overview of the Noise-Related Responsibilities of the Federal Government. Responsibility for the oversight and implementation of aviation laws and programs is delegated to the FAA under the Federal Aviation Act of 1958 (FAA Act), as amended, 49 United States Code (U.S.C.) § 40101 et seq. The basic national policies intended to guide FAA actions under the FAA Act are set forth in 49 U.S.C. § 40101(d), which declares that certain matters are in the public interest. To achieve these statutory purposes, 49 U.S.C. §§ 40103(b), 44502, and 44721 provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities.

The FAA has exercised this authority by promulgating wide-ranging and comprehensive federal regulations on the use of navigable airspace and air traffic control. Similarly, the FAA has exercised its aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under 49 U.S.C. § 44701 et seq. by extensive federal regulatory action.

The federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. Under the legal doctrine of federal preemption, which flows from the Supremacy Clause of the Constitution, state and local authorities do not generally have legal power to act in an area that already is subject to comprehensive federal regulation.

Because of the increasing public concern about aircraft noise that accompanied the introduction of turbojet powered aircraft in the 1960s and the constraints such concern posed for the continuing development of civil aeronautics and the air transportation system of the United States, the federal government in 1968 sought, and Congress granted, broad authority to regulate aircraft for the purpose of noise abatement.

This authority, codified at 49 U.S.C. § 44715, constitutes the basic authority for federal regulation of aircraft noise.

13.4. Code of Federal Regulations (CFR) Part 36, Noise Standards for Aircraft Type and Airworthiness Certification. Under 49 U.S.C. § 44715, the FAA may propose rules considered necessary to abate aircraft noise and sonic boom. Aircraft noise rules must be consistent with the highest degree of safety in air commerce and air transportation, economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. On November 18, 1969, the FAA promulgated the first aircraft noise regulations, which were codified in 14 CFR Part 36. The new Part 36 became effective on December 1, 1969. It prescribed noise standards for the type certification of subsonic transport category airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 initially applied only to new types of aircraft. As soon as the technology had been demonstrated, the standard was to be extended to all newly manufactured aircraft of already certificated types.

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 to provide for three stages of aircraft noise levels (Stage 1, Stage 2, and Stage 3), each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with Stage 3 noise limits, which were stricter than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated either as Stage 2 or Stage 1 airplanes.

In 1976, the FAA amended the aircraft operating rules in 14 CFR Part 91 to phase out operations in the United States, by January 1, 1985, of Stage 1 aircraft weighing more than 75,000 pounds. These aircraft were defined as civil subsonic aircraft that did not meet Stage 2 or Stage 3 Part 36 noise standards. Effectively, the Stage 1 category is composed of transport category and jet airplanes that cannot meet the noise levels required for Stage 2

The Aviation Safety and Noise Abatement Act (ASNA) provided for federal funding and other incentives for airport operators to prepare noise exposure maps and noise compatibility programs voluntarily. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map" submitted by the airport operator. Aircraft noise compatibility planning is critical to prevent residential development too close to the airport, as shown above. (Photo: FAA)

In 1973, the FAA amended Part 36 to extend the applicability of the noise standards to newly produced airplanes irrespective of type certification date. In 1977, the FAA amended Part 36 again to provide for three stages of aircraft noise levels, each with specified limits. Those are referred as Stage1, Stage 2, and Stage 3 aircraft; Stage 3 being the more recent and, generally, the quieter for a certain aircraft weight. The aircraft shown here – the Boeing 727 – is classified as a Stage 3 aircraft and is commonly seen at airports throughout the U.S. (Photo: FAA)

or Stage 3 under Part 36, Appendix B. It also includes aircraft that were never required to demonstrate compliance with Part 36 because they were certificated prior to the requirement for Part 36 noise certification. Stage 1 aircraft include some corporate jets, some transport category turbo-prop, and some transport category piston airplanes. Aircraft certificated under Part 36 Subpart F, *Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes,* do not have a stage classification, and as such are referred to as nonstage. The vast majority of small general aviation (GA) aircraft and many propeller-driven commuter aircraft flying in the United States are nonstage aircraft. In addition, some aircraft to which Part 36 does not apply, regardless of method of propulsion, can be aircraft certificated in the experimental category. For example, most jet war birds, military aircraft types and World War II aircraft are also classified as nonstage aircraft.

As a result of congressional findings, ANCA revised CFR Part 91 to include the provision that no civil subsonic turbo aircraft weighing more than 75,000 pounds may be operated within the 48 contiguous states after January 1, 2000, unless it was shown to comply with the Stage 3 noise standards of CFR Part 36.

In July 2005, the FAA adopted more stringent Stage 4 standards for certification of aircraft, effective January 1, 2006. Any aircraft that meets Stage 4 standards will meet Stage 3 standards. Accordingly, policies for review of noise restrictions affecting Stage 3 aircraft may be applied to Stage 4 aircraft as well.

13.5. The Aircraft Noise Compatibility Planning Program. In 1979, Congress enacted the Aviation Safety and Noise Abatement Act (ASNA). In ASNA, Congress directed the FAA to: (1) establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise; (2) establish a single system for determining the exposure of individuals to noise from airport operations; and (3) identify land uses that are normally compatible with various exposures of individuals to noise. (See Table 1 of Part 150 at the end of this chapter.). FAA promulgated 14 CFR Part 150 to implement ASNA. Part 150 established the "day-night average sound level" (DNL) as the noise metric for determining the exposure of individuals to aircraft noise. It identifies residential land uses as being normally compatible with noise levels below DNL 65 decibels (dB). ASNA also provided for federal funding and other incentives for airport operators to prepare noise exposure maps voluntarily and institute noise compatibility programs. Under ASNA, noise compatibility programs "shall state the measures the [airport] operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the [noise exposure] map."

a. Consistent with ASNA, Part 150 requires airport operators preparing noise compatibility programs to analyze the following alternative measures:

(1). Acquisition of land in fee, and interests therein, including but not limited to air rights, easements, and development rights;

(2). Construction of barriers and acoustical shielding, including the soundproofing of public buildings;

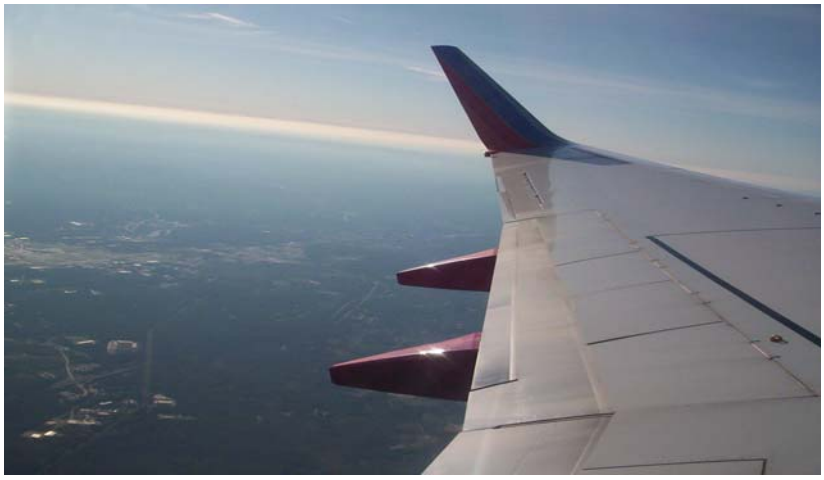
(3). Implementation of restrictions on the use of the airport by type or class of aircraft based on the noise characteristics of the aircraft;

(4). Implementation of a preferential runway system; use of flight procedures to control the operation of aircraft to reduce exposure of individuals or specific noise sensitive areas[34] to noise in the area around the airport;

(5). Other actions or combinations of actions that would have a beneficial noise control or abatement impact on the public; and

(6). Other actions recommended for analysis by the FAA for the specific airport.

b. Under Part 150, an airport operator "shall evaluate the several alternative noise control actions" and develop a noise compatibility program that:



The FAA has continuously, consistently, and actively encouraged a balanced approach to address noise problems and to discourage unreasonable and unwarranted airport use restrictions. It is a long-standing FAA policy that airport use restrictions should be considered only as a last resort when other mitigation measures are inadequate to address the noise problem satisfactorily and a restriction is the only remaining option that could provide noise relief. A balanced approach in noise mitigation is important in part because new technology in aircraft and engine design, along with new noise certification and noise abatement procedures, have in many instances been extremely successful in reducing noise impacts at airports across the country. Voluntary measures, such as asking flight crews to expedite climbs (safely) or apply airport specific noise procedures are inherently reasonable elements of a balanced approach. (Photos: FAA)

[34] These are land uses that may be adversely affected by cumulative noise levels at or above 65 DNL such as residential neighborhoods, educational, health, or religious structures or sites, and outdoor recreational, cultural and historic sites.

(1). Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(2). Does not impose an undue burden on interstate and foreign commerce;

(3). Does not derogate safety or adversely affect the safe and efficient use of airspace;

(4). To the extent practicable, meets both local interests and federal interests of the national air transportation system; and

(5). Can be implemented in a manner consistent with all of the powers and duties of the FAA Administrator.

As a matter of policy, FAA encourages airport proprietors to develop and implement aircraft noise compatibility programs under Part 150. Where an airport proprietor is considering an airport use restriction, Part 150 provides an effective process for determining whether the proposed restriction is consistent with applicable legal requirements, including the grant assurances in airport development grants. However, while a restriction might meet the Part 150 criteria, that does not necessarily mean it will meet the Part 161 criteria. ASNA and Part 150 set forth an appropriate means of defining the noise problem, recognizing the range of local and federal interests, ensuring broad public and aeronautical participation, and balancing all of these interests in a manner to ensure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's federal obligations. Accordingly, the FAA included in 14 CFR Part 161, the regulations that implement ANCA, an option to use the Part 150 process to provide public notice and opportunity to comment on a proposed Stage 2 or Stage 3 restriction. The FAA encouraged the use of Part 150 for meeting the notice and comment requirements of Part 161, noting that the Part 150 process "is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation." The FAA further noted, in the preamble to the Part 161 final rule, that a Part 150 determination "may provide valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws, and the position of the FAA with respect to the restriction."

13.6. Compliance Review. As part of a Part 150 study, the FAA requires the sponsor to analyze fully the anticipated impact of any proposed restriction. The FAA must evaluate whether the restriction places an undue burden on interstate or foreign commerce or the national aviation system, and whether the restriction affects the sponsor's ability to meet its federal obligations. Certain restrictions may have little impact at one airport and a great deal of impact at others. Accordingly, the sponsor must clearly present the impact of the restriction at the affected airport. A sponsor with a multiple airport system may designate different roles for the airports within its system. That designation in itself does not authorize restrictions on classes of operations, and the sponsor should first present its plan to FAA to ensure compliance with grant assurances and other federal obligations.

13.7. Mandatory Headquarters Review. The FAA headquarters staff shall review proposed noise restrictions, especially those that are proposed without using the Part 150 process. Accordingly, if the ADOs or regional airports divisions identify a restriction that potentially

impacts the sponsor's federal obligations, it must coordinate its actions with the Airport Planning and Environmental Division (APP-400) through the FAA headquarters Airport Compliance Division (ACO-100).

13.8. Balanced Approach to Noise Mitigation. Proposed noise-based airport use restrictions must consider federal interests in the national air transportation system as well as the local interests they are intended to address.

a. FAA Policy. The FAA has encouraged a balanced approach to address noise problems and has discouraged unreasonable airport use restrictions. It is FAA policy that airport use restrictions should be considered only as a measure of last resort when other mitigation measures are inadequate to satisfactorily address a noise problem and a restriction is the only remaining option that could provide noise relief. This policy furthers the federal interest in maintaining the efficiency and capacity of the national air transportation system and, in particular, the FAA's responsibility to ensure that federally funded airports maintain reasonable public access in compliance with applicable law.

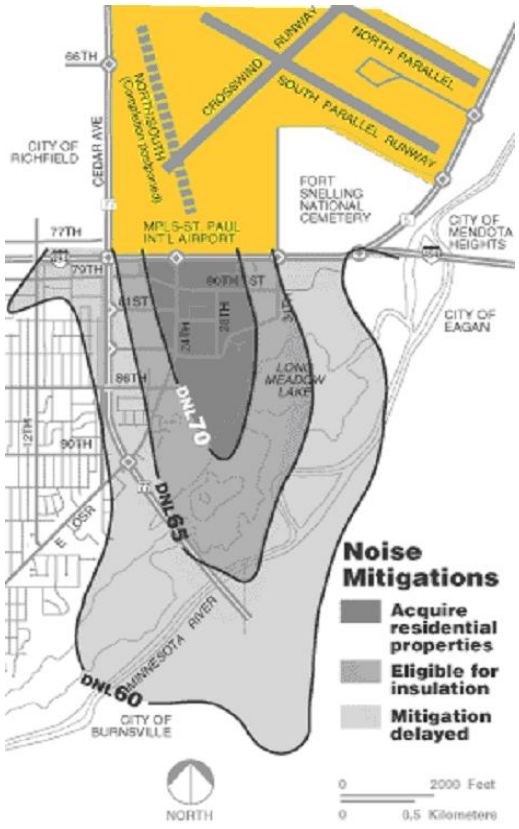
b. Federal Methodology. Failure to consider a combination of measures, such as land acquisitions, easements, noise abatement procedures, and sound insulation could result in a finding that a balanced approach was not used in addressing a noise problem. A sponsor's acceptance of federal funds places upon it certain federal obligations, which require it first to consider a wide variety of options to alleviate a local noise problem. Consistent with these federal requirements and policies, the FAA interprets the requirement in 49 U.S.C. § 47107(a)(1) that a federally funded airport will be "available for public use

Aircraft noise and access restrictions must comply with Grant Assurance 22, Economic Nondiscrimination, and similar requirements under 49 U.S.C. § 47152 (2), (3), Surplus Property Conveyances Covenants and section 516 of the Airport and Airway Improvement Act of 1982 (AIAA), section 23 of the Airport and Airway Development Act of 1970 (1970 Airport Act), and section 16 of the Federal Airport Act of 1946, Nonsurplus Conveyances Covenants. Under the prohibition on unjust discrimination in Grant Assurance 22 and similar requirements, a sponsor may not unjustly discriminate between aircraft because of propulsion system, weight, type, operating regulations, or any other characteristic that does not relate to actual noise emissions. For example, some first generation turboprop aircraft – such as the Fokker F-27 seen here below – and the DC-3/C-47 shown above are noisier than many jets. (Photo: Above, USAF; Below, Bob Garrard).

on reasonable conditions" as requiring that a regulation restricting airport use for noise purposes: (1) be justified by an existing noncompatible land use problem; (2) be effective in addressing the identified problem without restricting operations more than necessary; and (3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

c. The Role of ASNA and Part 150. Aircraft under ASNA involves consideration of a range of alternative mitigation measures, including aircraft noise and other restrictions. For example, under Part 150, the airport operator could, among other things, recommend constructing noise barriers, installing acoustical shielding, and acquiring land, easements, air rights, and development rights to mitigate the effects of noise consistent with 49 U.S.C. § 47504. The FAA does not need to examine nonrestrictive measures to see if they are consistent with ANCA and Grant Assurance 22, *Economic Nondiscrimination*, or related federal obligations.

d. Reasonable Alternatives. Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Realistic alternatives, then, will normally consist of combinations of the



Developing reasonable alternatives is the nucleus of the compatibility planning process. The objective is to explore a wide range of feasible options and alternative compositions of land use patterns, noise control actions, and noise impact patterns, seeking optimum accommodation of both airport users and airport neighbors within acceptable safety, economic, and environmental parameters. It is unlikely that any single option, by itself, will be capable of totally solving the problem(s) without having objectionable impacts of its own. Some options may have little or no value in the situation, especially if used alone. Others, like the land acquisition and insulation proposal shown above, may be very effective. (Photo: http://www.ci.bloomington.mn.us/)

various options in ways that offer more complete solutions with more acceptable impacts or costs.

A balanced approach – using a combination of nonrestrictive measures and considering use restrictions only as a last resort – is inherently reasonable and is used nationally and internationally. On the other hand, bypassing nonrestrictive measures and only relying on restrictive alternatives can be an inherently unreasonable approach to addressing a noise problem.

13.9. Cumulative Noise Metric. In ASNA, Congress directed the Secretary of Transportation to "establish a single system for determining the exposure of individuals to noise resulting from airport operations" and "identify land uses normally compatible with various exposures of individuals to noise."

As directed by Congress in ASNA, the FAA has established DNL as the metric for "determining the exposure of individuals to noise resulting from airport operations." Also in compliance with ASNA, the FAA has established the land uses normally compatible with exposures of individuals to various levels of aircraft noise. The FAA determined that residential land use is "normally compatible" with noise levels of less than DNL 65 dB. In other words, a sponsor should demonstrate that a proposed restriction will address a noise problem within the 65 dB DNL contour.

Realistic alternatives will normally consist of combinations of the various options in ways that offer more complete solutions with more acceptable impacts or costs.

A restriction designed to address a noise problem must be based on significant cumulative noise impacts, generally represented by an exposure level of DNL 65 dB or higher in an area not compatible with that level of noise exposure. A community is not precluded from adopting a cumulative noise exposure limit different than DNL 65 dB, but cannot apply a different standard to aircraft noise than it does to all other noise sources in the community. This is not common, and most noise mitigation measures can be expected to address cumulative noise exposure of DNL 65 dB and higher.

13.10. General Noise Assessment. In assessing the reasonableness and unjustly discriminatory aspect of a proposed noise restriction, FAA may need to answer the following:

a. Is Part 150 documentation available for review and consideration? Has the sponsor completed the required analysis, public notice, and approval process under 14 CFR Part 161? Has the sponsor implemented the measures?

b. Is the proposed restriction a rational response to a substantiated noise problem?

c. Were nonrestrictive land use measures considered first?

d. Is proper methodology being used in comparing alternatives?

e. Is there consistency between guidelines governing the establishment of compatible land use and those governing an access restriction? Do they work together to solve the noise problem?

f. Are existing local land use standards designed to achieve the same level of compatibility sought by the restriction (i.e., does the community tolerate a higher level of noise for nonaviation uses and place a higher burden of noise mitigation on the airport and its users than it does on other noise sources)?

g. Are the restrictions intended to achieve noise reductions above 65 dB or below? Is guidance from the federal Interagency Committee on Aviation Noise (FICAN) being used?[35]

h. Has the sponsor demonstrated any exposure to financial liability for noise impact as a result of a noise problem?

i. Is the restriction based on a qualifier other than noise? For example, noise-based restrictions have to be justified on the grounds of aircraft noise. A restriction based on aircraft weight or any other qualifier other than noise emission might be unjustly discriminatory if the purpose is to address a noise problem.

In reviewing the reasonableness of airport access restrictions, the FAA must consider whether the airport sponsor has taken appropriate action to the extent reasonable to restrict the use of land near the airport to uses that are compatible with airport operations. The airport sponsor is obligated under its federal grant assurances to address incompatible land use in the vicinity of the airport. These homes in the vicinity of an airport are a clear indication of the failure of local zoning to protect the airport. (Photos: FAA)

13.11. Residential Development. In reviewing the reasonableness of airport access restrictions, the

[35] The Federal Interagency Committee on Aviation Noise (FICAN) was formed in 1993 to provide forums for debate over future research needs to better understand, predict, and control the effects of aviation noise, and to encourage new technical development efforts in these areas. Additional information may be available online.

FAA must consider whether the sponsor has fulfilled its responsibilities regarding compatible land use under Grant Assurance 21, *Compatible Land Use***.** Airport sponsors are obligated to take appropriate action, including the adoption of zoning laws, to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations. Local land use planning, as a method of determining appropriate (and inappropriate) use of properties around airports, should be an integral part of the land use policy and regulatory tools used by state and local land use planning agencies. Very often, such land use planning coordination is hampered by the fact that an airport can be surrounded by multiple individual local governmental jurisdictions, each with its own planning process. Some airport authorities have the authority to control land use, but many do not. If the airport sponsor does not have authority to control local land use, FAA will not hold the actions of independent land use authorities against the airport sponsor. However, FAA expects the airport sponsor to take reasonable actions to encourage independent land use authorities to make land use decisions that are compatible with aircraft operations. The airport sponsor should be proactive in opposing planning and proposals by independent authorities to permit development of new noncompatible land uses around the airport.

13.12. Impact on Other Airports and Communities. In evaluating the significance of a restriction, the FAA will consider the degree to which the restriction may affect other airports in two general ways: (1) whether it establishes a precedent for restrictions at more airports, possibly resulting in significant effects on the national air transportation system, and (2) whether other airports in the region will be impacted by traffic diverted from the restricted airport, either by shifting noise impact from one community to another or by burdening a hub airport with general aviation traffic that should be able to use a reliever airport.

13.13. The Concept of Unjust Discrimination. Grant Assurance 22, *Economic Nondiscrimination*, of the prescribed grant assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport will make its airport available as an airport 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.

Consistent with Grant Assurance 22, *Economic Nondiscrimination*, airport sponsors are prohibited from unjustly discriminating among airport users when implementing a noise-based restriction. The FAA has determined – and the federal courts have held – that the use of noise control regulations to ban aircraft on a basis unrelated to noise is unjustly discriminatory and a violation of the federal grant assurances and federal surplus property obligations.

For example, in *City and County of San Francisco v. FAA*, the airport adopted an aircraft noise regulation that resulted in the exclusion from the airport of a retrofitted Boeing 707 that met Stage 2 standards while permitting use of the airport by 15 other models of aircraft emitting as much or more noise than the 707. The Ninth Circuit Court of Appeals affirmed the FAA's determination that the airport regulation was unjustly discriminatory because it allowed aircraft that were equally noisy or noisier than the aircraft being restricted to operate at the airport and to increase in number without limit while excluding the 707 based on a characteristic that had no bearing on noise (date of type-certification as meeting Stage 2 requirements).

In *Santa Monica Airport Association v. City of Santa Monica*, the Court struck down the airport's ban on the operation of jet aircraft on the basis of noise under the Commerce and Equal Protection clauses of the U.S. Constitution. The Court found that, "… in terms of the quality of the noise produced by modern type fan-jets and its alleged tendency to irritate and annoy, there is absolutely no difference between the noise of such jets and the noise emitted by the louder fixed-wing propeller aircraft which are allowed to use the airport."

13.14. Part 161 Restrictions Impacting Stage 2 or Stage 3 Aircraft.

a. Stage 2 or 3 Aircraft. Airport noise/access restrictions on operations by Stage 2 or Stage 3 aircraft must comply with ANCA, as implemented by 14 CFR Part 161.

ANCA does not require FAA approval of restrictions on Stage 2 aircraft operations; however, FAA determines whether applicable notice, comment, and analysis requirements have been met. The FAA also separately reviews proposed Stage 2 restrictions for compliance with grant assurance and surplus property obligations. For this purpose, the FAA relies upon the standards under ASNA, as implemented by 14 CFR 150.

ANCA prescribes a more stringent process for national review of proposed restrictions on Stage 3 aircraft operations, including either FAA approval or, alternatively, agreement by all operators at the airport. If FAA approval is required, then the process for review of restrictions on Stage 3 aircraft operations includes consideration of environmental impacts. The statutory criteria for FAA approval of Stage 3 restrictions includes the criteria used under 14 CFR Part 150 to determine compliance with the grant assurance and Surplus Property Act obligations. For Stage 3 restrictions, the ANCA review considers compliance with grant assurance and surplus property obligations.

Aircraft certificated under Part 36 Subpart F "Propeller Driven Small Airplanes and Propeller-Driven, Commuter Category Airplanes" do not have a stage classification, and as such are referred to as nonstage. Most small general aviation aircraft and many commuter aircraft are nonstage aircraft. An example is the Beechcraft 58 Baron. (Photo: FAA)

Proposals to restrict operations by Stage 3 aircraft must (1) be agreed upon by the airport and all users at the airport or (2) satisfy procedural requirements similar to proposals to restrict Stage 2 operations and be

approved by FAA. To be approved, restrictions must meet the following six statutory criteria:

- The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.
- The proposed restriction does not create an undue burden on interstate or foreign commerce.
- The proposed restriction maintains safe and efficient use of the navigable airspace.
- The proposed restriction does not conflict with any existing federal statute or regulation.
- The applicant has provided adequate opportunity for public comment on the proposed restriction.
- The proposed restriction does not create an undue burden on the national aviation system.

b. ANCA Grandfathering. ANCA contains special provisions that "grandfather" restrictions on Stage 2 aircraft operations that were proposed before October 1, 1990. ANCA also grandfathers restrictions on Stage 3 aircraft that were in effect on October 1, 1990. Airport

The variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one individual will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others will only complain about helicopter noise. (Photos: FAA).

sponsors who adopted restrictions before ANCA was enacted on November 5, 1990, may amend these restrictions without complying with ANCA provided the amendment does not reduce or limit aircraft operations or affect aircraft safety. However, amendments to existing restrictions and new restrictions are subject to review for compliance with the federal grant assurances and federal surplus property obligations.

c. Consistency of Part 161 and Grant Assurance Determinations on Proposed Restrictions of Operations by Stage 2 Aircraft. It is possible for a proposed Stage 2 restriction to meet the requirements of Part 161, which are essentially procedural, but fail to comply with the grant assurance requirements to provide access on reasonable terms without unjust discrimination. Accordingly, in reviewing a restriction on operations by Stage 2 aircraft, it is important that FAA regional airports divisions coordinate with the FAA headquarters Airport Compliance Division (ACO-100), the FAA Airport Planning and Environmental Division (APP-400), and to assure consistency between agency Part 161 and grant assurance determinations.

13.15. Undue Burden on Interstate Commerce.

The FAA is responsible for reviewing and evaluating an airport sponsor's noise restrictions to determine whether there is an undue burden on interstate or foreign commerce contrary to the airport's federal requirements under the grant assurances, the Surplus Property Act, and ANCA.

a. General. An airport restriction must not create an undue burden on interstate commerce. The FAA will make the determination on whether it is an undue burden. While airport restrictions may have little impact at one airport, they may have a great deal of impact at others by adversely affecting airport capacity or excluding certain users from the airport. The magnitude of both impacts must be clearly presented. Any regulatory action that causes an unreasonable interference with interstate or foreign commerce could be an undue burden.

b. Analysis and Process. In all cases, it is essential to determine whether there are interstate operations into and out of the airport in question, as well as the level of air carrier service. For example, the airport may have Part 121 operations or others engaged in Part 135 commercial operations of an interstate commerce nature. While some kinds of operations may be entirely local, e.g., air tours or crop dusting, most commercial aviation will involve interstate commerce to some degree.

In determining whether a particular restriction would cause an undue burden on interstate commerce, it may be necessary to consider the total number of based aircraft and aircraft operations, the role of the airport, and the capabilities of other airports within the system (i.e., reliever airport, general aviation (GA), or commercial service airport), and the number of operators engaged in interstate commerce. The analysis of a proposed restriction should also quantify the economic costs and benefits and the regional impact in terms of employment, earnings, and commerce.

13.16. Use of Complaint Data. Complaint data (i.e., from homeowner complaints filed with the airport) are generally not statistically valid indicators or measurements of a noise problem. Therefore, complaint data is usually not an acceptable justification for a restriction. Congress, in

ASNA, directed the FAA to establish a single system of noise measurement to be uniformly applied in measuring noise at airports and in surrounding areas for which there is a highly reliable relationship between projected noise and surveyed reactions of people to noise.
In 14 CFR Part 150, the FAA adopted DNL to fulfill this statutory federal obligation. While complaints may be a valid indication of *individual* annoyance, they do not accurately measure *community* annoyance. Reactions of individuals to a particular level of noise vary widely, while community annoyance correlates well with particular noise exposure levels. As the FAA stated in a 1994 report to Congress on aircraft noise:

The attitudes of people are actually more important in determining their reactions to noise than the noise exposure level. Attitudes that affect an individual's reactions include:

a. Apprehension regarding their safety because of the noise emitter,

b. The belief that the noise is preventable,

c. Awareness of non-noise environmental problems, and

d. A general sensitivity to noise, and the perceived economic importance of the noise emitter.

The resultant variability in the way individuals react to noise makes it essentially impossible to predict with any accuracy how any one *individual* will respond to a given noise. For example, some people object to noise emitted by jets, regardless of the actual noise energy level, while others complain about helicopter noise only. When *communities* are considered as a whole, however, reliable relationships are found between reported annoyance and noise exposure. This relationship between community annoyance and noise exposure levels "…remains the best available source of predicting the social impact of noise on communities around airports …". As the Federal Interagency Committee on Noise (FICON) noted in its 1992 report, "the best available measure of [community annoyance] is the percentage of the area population characterized as 'highly annoyed' (%HA) by long-term exposure to noise of a specified level (expressed in terms of DNL)."

13.17. Use of Advisory Circular (AC) 36-3H. Advisory Circular (AC) 36-3H provides listings of estimated airplane noise levels in units of A-weighted sound level in decibels (dBA), ranked in descending order under listed conditions and assumptions. A-weighted noise levels refer to the level of noise energy in the frequency range of human hearing, rather than total noise energy. The advisory circular provides data and information both for aircraft that have been noise type certificated under 14 CFR Part 36 and for aircraft for which FAA has not established noise standards.

While 14 CFR Part 36 requires turbojet and large transport category aircraft noise levels to be reported in units of Effective Perceived Noise Level in decibels (EPNdB) and the reporting of propeller-driven small airplanes and commuter category airplanes to be reported using a different method [A-weighted noise levels], many airports and communities use a noise rating scale that is stated in A-weighted decibels. For this reason, FAA has provided a reference source for aircraft noise levels expressed in A-weighted noise levels.

The noise levels in AC 36-3H expressed in A-weighted noise levels are estimated as they would be expected to occur during type certification. Aircraft noise levels that occur under uniform certification conditions provide the best information currently available to compare the relative noisiness of airplanes of different types and models. AC 36-3H should be used as the basis for comparing the noise levels of aircraft that are not subject to noise certification rules to aircraft that are certificated as Stage 1, Stage 2, or Stage 3 under 14 CFR Part 36.

Advisory Circular (AC) 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport operator's plan, and it is widely used and understood by the layman.

Table 13.1 in AC 36-3H provides an example of comparisons of aircraft. AC 36-3H provides the data in dBA, which is the base metric for DNL. It tabulates noise levels for a broad variety of aircraft in A-weighted sound level, retaining the advantage of the Part 36 testing methodology

ESTIMATED MAXIMUM A-WEIGHTED SOUND LEVELS
MEASURED IN ACCORDANCE WITH PART-36 APPENDIX -C- PROCEDURES
TAKEOFF

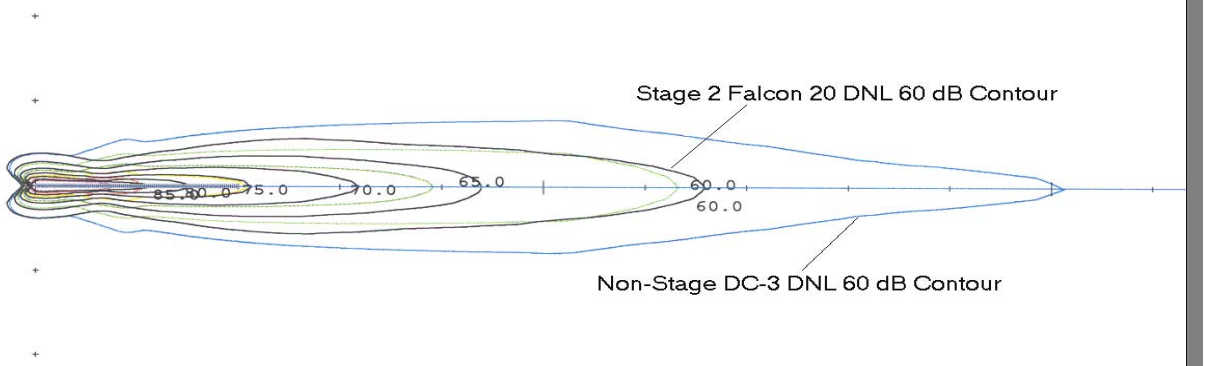
MANUFACTURER	AIRPLANE	ENGINE	TOGW 1000 LBS	EST DBA	FLAPS	NOT
BEECH	35-C33A	I0-520-B	3.30	70.0	-	
BEECH	F33A	I0-520-B	3.40	70.0	-	
BEECH	K35,M35	IO-470-C	3.00	70.0	-	
CESSNA	182P	O-470-S	3.00	70.0	-	1
CESSNA	320C	TSI0-470-D	5.20	70.0	-	
CESSNA	337H	IO-360-G	4.60	70.0	-	
PIPER	601P	IO-540-S1A5	6.00	70.0	-	
PIPER	PA-31-325	TIO-540-F2BD	6.50	70.0	-	
PIPER	PA-32R-301	IO-540-K1G5D	3.60	70.0	-	
PIPER	PA-46-31P MALIBU	TSIO-520-BE	4.10	70.0	-	
BOEING	B-757-200	PW-2037(BG-3)	220.00	69.9	5	
DASSAULT	FALCON 900	TFE731-5BR-1C	46.50	69.9	20	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
FOKKER	F100	RR TAY MK650-15	98.00	69.9	-	
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1
AVRO	146-RJ 70	LF507-1F	84.00	69.8	18	8,1

Table 13.1 Comparison of Aircraft Using Advisory Circular (AC) 36-3

and procedures (standardization, repeatability). AC 36-3H allows an "apple-to-apple" comparison among aircraft certificated under a variety of standards. It can easily be incorporated into an airport sponsor's noise compatibility plan, and it is widely used and understood in both the aviation industry and community planning agencies. However, the noise levels in AC 36-3H are not intended to determine what noise levels are acceptable or unacceptable for an individual community.

13.18. Integrated Noise Modeling. The FAA's Office of Environment and Energy (AEE-100) has developed the Integrated Noise Model (INM) for evaluating aircraft noise impacts in the vicinity of airports. INM has many analytical uses, such as (a) assessing changes in noise impact resulting from new or extended runways or runway configurations, (b) assessing changes in traffic demand and fleet mix, and (c) evaluating other operational procedures. The INM has been the FAA's standard tool since 1978 for determining the predicted noise impact in the vicinity of airports. Requirements for INM use are defined in FAA Order 1050.1E, *Policies and Procedures for Considering Environmental Impacts*; FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*; and 14 CFR Part 150, *Airport Noise Compatibility Planning.*

The INM produces noise exposure contours that are used for land use compatibility maps. The INM program includes built-in tools for comparing contours; it also has features that facilitate easy export to a commercial geographic information system (GIS). The INM can also calculate predicted noise levels at specific sites of interest, such as hospitals, schools, or other noise-sensitive locations. For these grid points, the INM reports detailed information for the analyst to determine which events contribute most significantly to the noise level at that location. The INM supports 16 predefined noise metrics that include cumulative sound exposure, maximum sound



The FAA's, Office of Environment and Energy (AEE-100) has developed the Integrated Noise Model (INM) for evaluating aircraft noise impacts in the vicinity of airports. INM has many analytical uses, such as assessing changes in noise impact resulting from new or extended runways or runway configurations, assessing new traffic demand and fleet mix, and evaluating other operational procedures. The INM has been the FAA's standard tool since 1978 for determining the predicted noise impact in the vicinity of airports. The INM model produces noise exposure contours, such as the one depicted here, that can be used for land use compatibility maps. (Diagram: FAA)

level, and time above metrics from the A-Weighted, C-Weighted, and the Effective Perceived

Noise Level families. The user may also create the Australian version of the Noise Exposure Forecast (NEF).[36]

13.19. Future Noise Policy. Federal policy on noise measurement methodology and noise mitigation is not static, but can change with new legislation or reconsideration of past agency policy. ACO-100 should be consulted when reviewing a proposed aircraft noise restriction to ensure that current policy is applied to the review.

13.20. through 13.25 reserved.

[36] Additional information on the Integrated Noise Model (INM) and its use is available from the FAA Office of Environment and Energy (AEE-100) or online on the FAA web site.

TABLE 1

LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	*Yearly Day-Night Average Sound Level (L_{dn}) in Decibels*					
	Below 65	*65-70*	*70-75*	*75-80*	*80-85*	*Over 85*
Residential						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N1)1	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing And Production						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

* The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM	Standard Land Use Coding Manual.
Y (Yes)	Land Use and related structures compatible without restrictions.
N (No)	Land Use and related structures are not compatible and should be prohibited.
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35	Land used and related structures generally compatible; measures to achieve NLR or 25, 30, or 35 dB must be incorporated into design and construction of structure.

In the Aviation Safety and Noise Abatement Act (ASNA), Congress directed the FAA, among other things, to identify land uses that are normally compatible with various exposures of individuals to noise. The result was Table 1 in 14 CFR Part 150, as depicted above. (Graphic: FAA)

NOISE ABATEMENT PROCEDURES

Large (Greater Than 12,500 lbs.) and All Turbine Powered

RUNWAY 16:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 800 ft. MSL turn to a 320 degree heading and set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Eastbound: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL set thrust to achieve 1,000 fpm climb rate. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Intercept the final approach course **at or beyond the ILS Outer Marker (5 DME).** Use minimum flap setting and delay extending landing gear until established on the final approach. Use thrust reduction techniques and minimize rapid RPM changes.

RUNWAY 34:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL turn to a 295 degree heading and set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Intercept the final approach course over Long Island Sound. Use minimum flap setting and delay extending landing gear until established on the final approach. Use thrust reduction techniques and minimize rapid RPM changes.

Note: Inbound; avoid overflying shoreline communities.

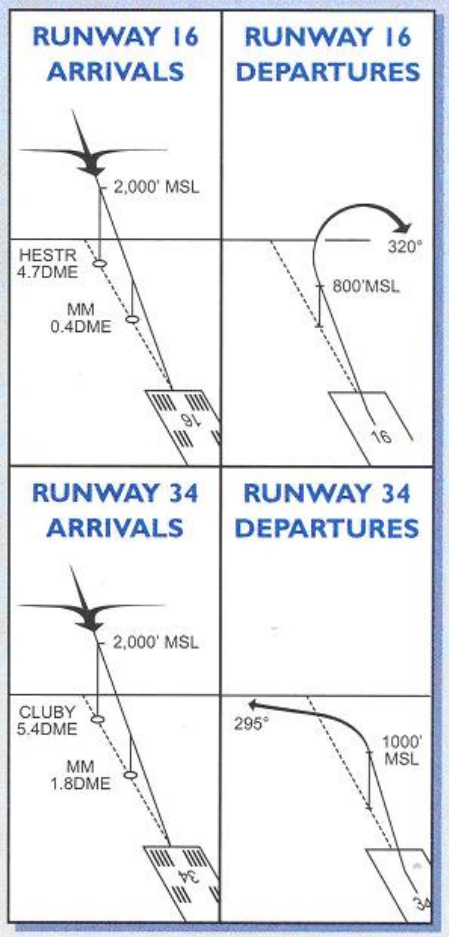
RUNWAY 11 AND 29:

Departure: Maintain runway heading and climb at (V2 + 20) not to exceed 190 KIAS. Upon reaching 1,000 ft. MSL set thrust to achieve 1,000 fpm climb rate to 2,500 ft. MSL. Use reduced climb power until reaching 3,500 ft. MSL.

Arrival: Maintain 2,500 ft. MSL or higher as long as practical. Use minimum flap setting and delay extending landing gear until beginning final decent to landing. Use thrust reduction techniques and minimize rapid RPM changes.

Note: Avoid making turns to a short final when possible.

Safety and ATC Instructions override Noise Abatement Procedures.



AIRPORT INFORMATION

Noise Abatement Office: 914-995-4861
Operations Office: 914-995-4850
Airport Manager: 914-995-4856
Control Tower: 914-948-6520
ATIS: 914-948-0130
ASOS: 914-288-0216
New York FSS: 1-800-WX-BRIEF

Runways:
16/34 6,548' X 150' (ASPH-GRVD)
11/29 4,451' X 150' (ASPH-GRVD)
Rwy 29: Threshold Displaced

As mentioned in this voluntary noise abatement pilot handout, safety of flight and Air Traffic Control (ATC) instruction always override noise abatement procedures. (Source: Panorama Flight Service, Westchester County Airport, New York)

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OFFICIAL

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MUNICIPAL CODE ™

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As Amended Through **December 31, 2017**

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SEC. 12.20.3. "HP" HISTORIC PRESERVATION OVERLAY ZONE.
(Amended by Ord. No. 184,903, Eff. 6/17/17.)

The following regulations shall apply in an HP Historic Preservation Overlay Zone:

A. Purpose. It is hereby declared as a matter of public policy that the recognition, preservation, enhancement, and use of buildings, structures, Landscaping, Natural Features, and areas within the City of Los Angeles having Historic, architectural, cultural or aesthetic significance are required in the interest of the health, economic prosperity, cultural enrichment and general welfare of the people. The purpose of this section is to:

1. Protect and enhance the use of buildings, structures, Natural Features, and areas, which are reminders of the City's history, or which are unique and irreplaceable assets to the City and its neighborhoods, or which are worthy examples of past architectural styles;

2. Develop and maintain the appropriate settings and environment to preserve these buildings, structures, Landscaping, Natural Features, and areas;

3. Enhance property values, stabilize neighborhoods and/or communities, render property eligible for financial benefits, and promote tourist trade and interest;

4. Foster public appreciation of the beauty of the City, of the accomplishments of its past as reflected through its buildings, structures, Landscaping, Natural Features, and areas;

5. Promote education by preserving and encouraging interest in cultural, social, economic, political and architectural phases of its history;

6. Promote the involvement of all aspects of the City's diverse neighborhoods in the historic preservation process; and

7. To ensure that all procedures comply with the California Environmental Quality Act (CEQA).

B. Definitions. For the purposes of this Section 12.20.3, the following words and phrases are defined:

1. **ADDITION** is an extension or increase in floor area or height of a building or structure.

2. **ALTERATION** is any exterior change or modification of a building, structure, Landscaping, Natural Feature or lot within a Historic Preservation Overlay Zone, including, but not limited to, changing exterior paint color, removal of significant trees or Landscaping, installation or removal of fencing, and similar Projects, and including street features, furniture or fixtures.

3. **BOARD** is the respective Historic Preservation Board as established by this section.

4. **BUILDING COVERAGE** is the area of a parcel covered by buildings measured from the outside of the exterior perimeter of a building, including covered porches, patios, and detached or attached accessory structures. Building Coverage does not include uncovered areas such as paved parking, driveways, walkways, steps, terraces, decks, and porches; or roof overhangs and architectural projections not designed for shelter or occupancy.

5. **CERTIFICATE OF APPROPRIATENESS** is an approved certificate issued for the construction, Additions over established thresholds outlined in Section 12.20.3 K., Demolition, Reconstruction, Alteration, removal, or relocation of any publicly or privately owned building, structure, Landscaping, Natural Feature, or lot within a Historic Preservation Overlay Zone that is identified as a Contributing Element in the Historic Resources Survey for the zone, including street features, furniture or fixtures.

6. **CERTIFICATE OF COMPATIBILITY** is an approved certificate issued for the construction of a new building or structure on a lot, Demolition, or building replacement of an element, identified as Non-Contributing, or not listed, in the Historic Resources Survey for the zone.

7. **CONTRIBUTING ELEMENT** is any building, structure, Landscaping, Natural Feature identified on the Historic Resources Survey as contributing to the Historic significance of the Historic Preservation Overlay Zone, including a building or structure which has been altered, where the nature and extent of the Alterations are determined reversible by the Historic Resources Survey.

8. **CULTURAL** is anything pertaining to the concepts, skills, habits, arts, instruments or institutions of a given people at any given point in time.

9. **DEMOLITION** is the removal of more than 50% of the perimeter wall framing, the removal of more than 50% of the roof framing, or the substantial removal of the exterior of a facade in the Street-Visible Area.

10. **HISTORIC** is any building, structure, Landscaping, Natural Feature, or lot, including street features, furniture or fixtures which depicts, represents or is associated with persons or phenomena which significantly affect or which have significantly affected the functional activities, heritage, growth or development of the City, State, or Nation.

11. **HISTORIC RESOURCES SURVEY** is a document, which identifies all contributing and non-contributing buildings, structures and all contributing Landscaping, Natural Features and lots, individually or collectively, including street features, furniture or fixtures, and which is certified as to its accuracy and completeness by the Cultural Heritage Commission.

12. **HISTORICAL PROPERTY CONTRACT** is a contract, between an Owner or Owners of a Historical-Cultural Monument or a Contributing Element and the City of Los Angeles, which meets all requirements of California Government Code Sections 50281 and 50282 and 19.140, et seq., of the Los Angeles Administrative Code.

13. **LANDSCAPING** is the design and organization of landforms, hardscape, and softscape, including individual groupings of trees, shrubs, groundcovers, vines, pathways, arbors, etc.

14. **MAINTENANCE AND REPAIR** is any work done to correct the deterioration, decay of, or damage to a building, structure or lot, or any part thereof, including replacement in-kind where required, and which does not involve a change in the existing design, materials, or exterior paint color.

15. **MONUMENT** is any building, structure, Landscaping, Natural Feature, or lot designated as a City Historic-Cultural Monument.

16. **NATURAL FEATURE** is any significant tree, plant life, geographical or geological feature identified individually or collectively on the Historic Resources Survey as contributing to the Cultural or Historical significance of the Historic Preservation Overlay Zone.

17. **NON-CONTRIBUTING ELEMENT** is any building, structure, Natural Feature, lot, or Landscaping, that is identified in the Historic Resources Survey as a Non-Contributing Element, or not listed in the Historic Resources Survey.

18. **OWNER** is any person, association, partnership, firm, corporation or public entity identified as the holder of title on any property as shown on the records of the City Engineer or on the last assessment roll of the County of Los Angeles, as applicable. For purposes of this section, the term Owner shall also refer to an appointed representative of an association, partnership, firm, corporation, or public entity which is a recorded Owner.

19. **PRESERVATION ZONE** is any area of the City of Los Angeles containing buildings, structures, Landscaping, Natural Features or lots having Historic, architectural, Cultural or aesthetic significance and designated as a Historic Preservation Overlay Zone under the provisions of this section.

20. **PROJECT** is the Addition, Alteration, construction, Demolition, Reconstruction, Rehabilitation, relocation, removal or Restoration of the exterior of any building, structure, Landscaping, Natural Feature, or lot, within a Preservation Zone, except as provided under Subsection H. A Project may or may not require a building permit, and may include, but not be limited to changing exterior paint color, removal of significant trees or Landscaping, installation or removal of fencing, replacement of windows and/or doors which are character-defining features of architectural styles, removal of features that may or may not have a building permit, or changes to public spaces and similar activities.

21. **RECONSTRUCTION** is the act or process of reproducing by new construction the exact form, features and details of a vanished building, portion of a building, structure, landscape, Natural Feature, or object as it appeared at a specific period of time, on its original or a substitute lot.

22. **REHABILITATION** is the act or process of returning a property to a state of utility, through repair or Alteration, which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its Historical, architectural and Cultural values.

23. **RENTER** is any person, association, partnership, firm, corporation, or public entity which has rented or leased a dwelling unit or other structure within a Preservation Zone for a continuous time period of at least three years. For purposes of this section, the term Renter shall also refer to an appointed representative of an association, partnership, firm, corporation, or public entity which is a renter.

24. **RESTORATION** is the act or process of accurately recovering the form, features and details of a property as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

25. **RIGHT-OF-WAY** is the dedicated area that includes roadways, medians and/or sidewalks.

26. **STREET VISIBLE AREA** is any portion of the front, side, and rear facades that can be seen from any adjacent street, alley, or sidewalk, or that would be visible but are currently obstructed by landscaping, fencing, or freestanding walls. The Street Visible Area includes undeveloped portions of the lot where new construction would be visible from the adjacent street or sidewalk; facades that are generally visible from non-adjacent streets due to steep topography; or second stories visible over adjacent one-story structures.

C. Relationship to Other Provisions of the Code. Whenever the City Council establishes, adds land to, eliminates land from or repeals in its entirety a Preservation Zone, the provisions of this section shall not be construed as an intent to abrogate any other provision of this Code. Any street, or portion thereof, located within or sharing a boundary with a Preservation Zone(s), is not subject to the street dedication and/or improvement requirements as set forth in Sections 12.37 A. - C. and 17.05 of the Los Angeles Municipal Code unless requested by the Director of Planning, provided that the existing sidewalk(s) is in compliance with any accessibility guidelines within the public right-of-way that are adopted to comply with Title II of the Americans with Disabilities Act. When it appears that there is a conflict, the most restrictive requirements of this Code shall apply, except for a requirement in this section, which may compromise public safety if enforced.

D. Historic Preservation Board.

1. **Establishment.** There is hereby established for each Preservation Zone a Historic Preservation Board. A Board may serve two or more Preservation Zones in joint name and administration. Preservation Zones may have separate, individual Preservation Plans administered under one Board. Each Board shall have, as part of its name, words linking it to its area(s) of administration and distinguishing it from all other boards.

2. **Composition.** A Board shall be comprised of five members. Where a Board serves two or more Preservation Zones, the Board shall be comprised of seven members. At least three members shall be Renters or Owners of property in the Preservation Zone(s), with a Renter or property Owner representative from each Preservation Zone on the Board. In the event a Preservation Zone is established for an area insufficient in size to provide for a Board whose members meet the requirements of this subsection, for appointment purposes only, the area may be expanded to include the community plan area in which the Preservation Zone is located. In the event a Board still cannot be comprised of members who meet the requirements of this subsection, the Director of Planning shall assume all the powers and duties otherwise assigned to the Board for the Preservation Zone(s) until a Board can be established.

3. **Term of Membership.** Members of the Board shall serve for a term of four years. Members of the Board whose terms have expired may continue to serve on the Board until their replacements are appointed.

4. **Appointment of Members.** All members shall have demonstrated a knowledge of, and interest in, the culture, buildings, structures, historic architecture, history and features of the area encompassed by the Preservation Zone and, to the extent feasible, shall have experience in historic preservation. The appointing authorities are encouraged to consider the cultural diversity of the Preservation Zone in making their appointments. Appointees serve at the pleasure of the appointing authority, and the appointment may be rescinded at any time prior to the expiration of a member's term. To the maximum extent practicable, members shall be appointed as follows:

(a)

Appointing Body	Appointee Qualifications
Mayor	One member having extensive real estate or construction experience.
Councilmember	One member who is a Renter or Owner of Property in the Preservation Zone(s) shall be appointed by the Councilmember of the district in which the Preservation Zone is located. Where a Board serves two or more Preservation Zones two Renters or Owners of Property shall be appointed.
Cultural Heritage Commission	One member shall be an architect licensed by the State of California.
Cultural Heritage Commission	One member who is a Renter or Owner of Property in the Preservation Zone(s). Where a Board serves two or more Preservation Zones two Renters or Owners of Property shall be appointed.
Board	One member who is a Renter or Owner of Property in the Preservation Zone(s), pursuant to the criteria set forth in Subsection D.4.(d).

(b) Where a Board serves two or more Preservation Zones in joint name and administration, a Renter or property Owner representative shall be appointed for each Preservation Zone the Board serves.

(c) In cases where the Preservation Zone(s) is/are located in more than one council district, the appointment shall be made by the Councilmember representing the greatest land area in the Preservation Zone(s).

(d) The Board shall consider appointee suggestions from the certified Neighborhood Council representing the district in which the Preservation Zone(s) is/are located. In cases where the Preservation Zone(s) is/are located in an area represented by more than one Neighborhood Council, the appointee suggestions shall be made by the Neighborhood Council representing the greatest land area in the Preservation Zone(s). In those Preservation Zones containing no Certified Neighborhood Councils, or if, after notification of a vacancy by the Planning Department, the Certified Neighborhood Council fails to make suggestions within 45 days, or at least one Certified Neighborhood Council meeting has been held, whichever occurs first, the Board may make its appointment without delay.

5. **Vacancies.** In the event of a vacancy occurring during the term of a member of the Board, the same body or official, or their successors, who appointed the member shall make a new appointment. The new appointment shall serve a four-year term beginning on the date of appointment. Where the member is required to have specified qualifications, the vacancy shall be filled with a person having these qualifications. If the appointing authority does not make an appointment within 60 days of the vacancy, the President of the City Council shall make a temporary appointment to serve until the appointing authority makes an appointment to occupy the seat or for a period of no more than one year.

6. **Expiration of Term.** Upon expiration of a term for any member of the Board, the appointment for the next succeeding term shall be made by the same body or official, or their successors, which made the previous appointment. No member of a Board shall serve more than two consecutive four-year terms.

7. **Boardmember Performance.** Boardmembers shall be expected to regularly attend scheduled Board meetings and fully participate in the powers and duties of the Board. Appointees serve at the pleasure of the appointing authority and the appointment may be rescinded at any time prior to the expiration of a member's term. A Boardmember with more than three consecutive unexcused absences or eight unexcused absences in a year period from regularly scheduled meetings may be removed by the appointing authority. Excused absences may be granted by the Board chair. In the event a Boardmember accrues unexcused absences, the Board shall notify the appointing authority.

8. **Organization and Administration.** Each Board shall schedule regular meetings at fixed times within the month with a minimum of two meetings a month. Meetings may be canceled if no deemed complete applications are received at least three working days prior to the next scheduled meeting.

There shall be at least one meeting a year. The Board shall establish rules, procedures and guidelines as it may deem necessary to properly exercise its function. The Board shall elect a Chairperson and Vice-Chairperson who shall serve for a one-year period. The Board shall designate a Secretary who shall serve at the Board's pleasure. For a five-member Board, three members shall constitute a quorum. For a seven-member Board, four members shall constitute a quorum. Decisions shall be determined by majority vote of the Board. Public minutes and records shall be kept of all meetings and proceedings showing the attendance, resolutions, findings, determinations and decisions, including the vote of each member. To the extent possible, the staff of the Department of City Planning may assist the Board in performing its duties and functions.

9. **Power and Duties.** When considering any matter under its jurisdiction, the Board shall have the following power and duties:

(a) To evaluate any proposed changes to the boundaries of the Preservation Zone it administers and make recommendations to the City Planning Commission, Cultural Heritage Commission and City Council.

(b) To evaluate any Historic Resources Survey, resurvey, partial resurvey, or modification undertaken within the Preservation Zone it administers and make recommendations to the City Planning Commission, Cultural Heritage Commission and City Council.

(c) To study, review and evaluate any proposals for the designation of Historic-Cultural Monuments within the Preservation Zone it administers and make recommendations to the Cultural Heritage Commission and City Council, and to request that other City departments develop procedures to provide notice to the Boards of actions relating to Historic-Cultural Monuments.

(d) To evaluate applications for Certificates of Appropriateness or Certificates of Compatibility and make recommendations to the Director or the Area Planning Commission.

(e) To encourage understanding of and participation in historic preservation by residents, visitors, private businesses, private organizations and governmental agencies.

(f) In pursuit of the purposes of this section, to render guidance and advice to any Owner or occupant on construction, Demolition, Alteration, removal or relocation of any Monument or any building, structure, Landscaping, Natural Feature or lot within the Preservation Zone it administers. This guidance and advice shall be consistent with approved procedures and guidelines, and the Preservation Plan, or in absence of a Plan, the guidance and advice shall be consistent with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

(g) To tour the Preservation Zone it represents on a regular basis, to promote the purposes of this section and to report to appropriate City agencies matters which may require enforcement action.

(h) To assist in the updating of the Historic Resources Survey for the Preservation Zone utilizing the criteria in Subsection F.3.(c), below.

(i) To make recommendations to decision makers concerning façade easements, covenants, and the imposition of other conditions for the purposes of historic preservation.

(j) To make recommendations to the City Council concerning the utilization of grants and budget appropriations to promote historic preservation.

(k) To assist in the preparation of a Preservation Plan, which clarifies and elaborates upon these regulations as they apply to the Preservation Zone, and which contains the elements listed in Subsection E.3.

10. **Conflict of Interest.** No Boardmember shall discuss with anyone the merits of any matter pending before the Board other than during a duly called meeting of the Board or subcommittee of the Board. No member shall accept professional employment on a case that has been acted upon by the Board in the previous 12 months or is reasonably expected to be acted upon by the Board in the next 12 months.

E. Preservation Plan. A Preservation Plan clarifies and elaborates upon these regulations as they apply to individual Preservation Zones. A Preservation Plan is used by the Director, Board, property Owners and residents in the application of preservation principles within a Preservation Zone.

1. **Preparation of a Preservation Plan.** A draft Preservation Plan shall be made available by the Board for review and comment to property Owners and Renters within the Preservation Zone.

(a) **Creation of a Preservation Plan where a Board exists.** Where established, a Board, with the assistance of the Director, shall prepare a Preservation Plan, which may be prepared with the assistance of historic preservation groups.

(b) **Creation of a Preservation Plan where no Board exists.** Where no Board exists, or has yet to be appointed, the Director, in consultation with the Councilmember(s) representing the Preservation Zone, may create a working committee of diverse neighborhood stakeholders to prepare a Preservation Plan for the Preservation Zone. This committee shall not assume any duties beyond preparation of the Preservation Plan.

2. **Approval of a Preservation Plan.**

(a) **Commission Hearing and Notice.** A draft Preservation Plan shall be set for a public hearing before the City Planning Commission or a hearing officer as directed by the City Planning Commission prior to the Commission action. Notice of the hearing shall be given as provided in Section 12.24 D.2. of this Code.

(b) **Cultural Heritage Commission Recommendation.** The Cultural Heritage Commission shall submit its recommendation regarding a proposed Preservation Plan within 45 days from the date of the submission to the Commission. Upon action, or failure to act, the Cultural Heritage Commission shall transmit its recommendation, if any, comments, and any related files to the City Planning Commission.

(c) **Decision by City Planning Commission.** Following notice and public hearing, pursuant to Subsection E.2.(a), above, the City Planning Commission may make its report and approve, approve with changes, or disapprove a Preservation Plan.

3. **Elements.** A Preservation Plan shall contain the following elements:

(a) A mission statement;

(b) Goals and objectives;

(c) A function of the Plan section, including the role and organization of a Preservation Plan, Historic Preservation Overlay Zone process overview, and work exempted from review, if any, and delegation of Board authority to the Director, if any;

(d) The Historic Resources Survey;

(e) A brief context statement which identifies the Historic, architectural and Cultural significance of the Preservation Zone;

(f) The Secretary of the Interior's Standards for Rehabilitation;

(g) Design guidelines for Rehabilitation or Restoration, Additions, Alterations, infill and the form of single- and multi-family residential, commercial, mixed-use and other non-residential buildings, structures, and public areas. The guidelines shall use the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; and

(h) Preservation incentives and adaptive reuse policies, including policies concerning adaptive reuse projects permitted under Section 12.24 X.12. of this Code.

4. **Modification of a City Planning Commission Approved Preservation Plan.** After approval by the City Planning Commission, a Preservation Plan shall be reviewed by the Board at least every five years, or as needed. Any modifications to the Plan resulting from the review shall be processed pursuant to the provisions of Subsection E., above.

F. Procedures for Establishment, Boundary Change or Repeal of a Preservation Zone.

1. **Requirements.** The processing of an initiation or an application to establish, change the

boundaries of or repeal a Preservation Zone shall conform with all the requirements of Section 12.32 A. through D. of this Code, and the following additional requirements.

2. **Initiation of Preservation Zone.**

(a) **By City Council, the City Planning Commission, the Director of Planning and the Cultural Heritage Commission.** In addition to the provisions of Section 12.32 A., the Cultural Heritage Commission may initiate proceedings to establish, repeal, or change the boundaries of a Preservation Zone. Upon initiation by City Council, the City Planning Commission, the Director of Planning, or the Cultural Heritage Commission, a Historic Resources Survey shall be prepared, pursuant to Subdivision 3., below.

(b) **By Application.** The proceedings for the establishment of a Preservation Zone may also be initiated by Owners or Renters of property within the boundaries of the proposed or existing Preservation Zone, pursuant to Section 12.32 S.3.(b) of this Code.

(1) An Historic Resources Survey shall not be prepared for a proposed Preservation Zone until such an application is verified by the Planning Department to contain the signatures of at least 75 percent of the Owners or lessees of property within the proposed district, pursuant to the requirements of Section 12.32 S.3.(b) of this Code.

(2) The application shall not be deemed complete until the requirements of Subsection F.2.(b)(1), above, are met and an Historic Resources Survey for the proposed Preservation Zone has been certified by the Cultural Heritage Commission pursuant to Subdivision 4.(a), below.

3. **Historic Resources Survey.**

(a) **Purpose.** Each Preservation Zone shall have an Historic Resources Survey, which identifies all Contributing and Non-Contributing Elements and is certified as to its accuracy and completeness by the Cultural Heritage Commission.

(b) **Context Statement.** In addition to the requirements above, the Historic Resources Survey shall also include a context statement supporting a finding establishing the relation between the physical environment of the Preservation Zone and its history, thereby allowing the identification of Historic features in the area as contributing or non-contributing. The context statement shall represent the history of the area by theme, place, and time. It shall define the various Historical factors which shaped the development of the area. It shall define a period of significance for the Preservation Zone, and relate Historic features to that period of significance. It may include, but not be limited to, Historical activities or events, associations with Historic personages, architectural styles and movements, master architects, designers, building types, building materials, landscape design, or pattern of physical development that influenced the character of the Preservation Zone at a particular time in history.

(c) **Finding of Contribution.** For the purposes of this section, no building, structure, Landscaping, or Natural Feature shall be considered a Contributing Element unless it is identified as a Contributing Element in the Historic Resources Survey for the applicable Preservation Zone. Features designated as contributing shall meet one or more of the following criteria:

(1) Adds to the Historic architectural qualities or Historic associations for which a property is significant because it was present during the period of significance, and possesses Historic integrity reflecting its character at that time; or

(2) Owing to its unique location or singular physical characteristics, represents an established feature of the neighborhood, community or city; or

(3) Retaining the building, structure, Landscaping, or Natural Feature, would contribute to the preservation and protection of an Historic place or area of Historic interest in the City.

(d) **Modification of a Previously Certified Historic Resources Survey.** The City Council, City Planning Commission, or Director may find that a previously certified Historic

Resources Survey needs to be modified, and may call for a revision, re-survey, or partial re-survey to a previously certified survey. Modifications, including boundary changes, re-surveys, partial re-surveys, and minor corrections of a previously certified Historic Resources Survey shall be processed as follows:

(1) Revisions involving a boundary change, expansion, or contraction of a Preservation Zone shall be certified by the Cultural Heritage Commission as to the accuracy of the survey, and shall be forwarded to the City Planning Commission for recommendation and the City Council for final action.

(2) Revisions involving a re-survey or partial re-survey of an existing Preservation Zone shall be certified by the Cultural Heritage Commission as to the accuracy of the survey, and shall be forwarded to the City Planning Commission for final action.

(3) The correction of technical errors and omissions in a previously certified Historic Resources Survey can be made by the Director based on input from the Board and the Cultural Heritage Commission or its designee.

(e) **Application Procedure for Redesignation of an Individual Property in a Certified Historic Resources Survey (Technical Correction).**

(1) **Application, Form and Contents.** To apply for a technical correction to a previously certified Historic Resources Survey pursuant to Section 12.20.3 F.3.(d)(3), an applicant shall file an application with the Department of City Planning, on a form provided by the Department, and include all information required by the instructions on the application. Prior to deeming the application complete, the Director shall advise the applicant of the processes to be followed and fees to be paid. Upon receipt of a complete application, the Director or his/her designee shall review all documents submitted and have the authority to approve or deny a technical correction.

(2) **Application Fees.** The application fees for a Property Survey Redesignation shall be as set forth in Section 19.01 F. of this Code.

4. **Approval Process.**

(a) **Cultural Heritage Commission Determination.** The Cultural Heritage Commission shall certify each Historic Resources Survey as to its accuracy and completeness, and the establishment of or change in boundaries of a Preservation Zone upon: (1) a majority vote and (2) a written finding that structures, Landscaping, and Natural Features within the Preservation Zone meet one or more of criteria (1) through (3), inclusive, in Subdivision 3.(c) of Subsection F. within 45 days from the date of the submission to the Commission. This time limit may be extended for a specified further time period if the Cultural Heritage Commission requests an extension, in writing, from the City Planning Commission. Upon action, or failure to act, the Cultural Heritage Commission shall transmit their determination, comments, and any related files to the City Planning Commission for recommendation.

(b) **City Planning Commission Approval.** The City Planning Commission shall make its report and recommendation to approve, approve with changes, or disapprove the consideration to establish, repeal, or change the boundaries of a Preservation Zone, pursuant to Section 12.32 C. of this Code. In granting approval, the City Planning Commission shall find that the proposed boundaries are appropriate and make the findings of contribution required in Subsection F.3.(c). The City Planning Commission shall also carefully consider the Historic Resources Survey and the determination of the Cultural Heritage Commission. The Director and the City Planning Commission may recommend conditions to be included in the initial Preservation Plan for a specific Preservation Zone, as appropriate to further the purpose of this section.

(c) **City Council.** Pursuant to Section 12.32 C.7. of this Code, the City Council may approve or disapprove the establishment, repeal, or change in the boundaries of a Preservation Zone. The City Council may require that a specific Preservation Zone does not take effect

until a Preservation Plan for the Preservation Zone is first approved by the City Planning Commission.

G. Review of Projects in Historic Preservation Overlay Zones. All Projects within Preservation Zones, except as exempted in Subsection H., shall be submitted in conjunction with an application, if necessary, to the Department of City Planning upon a form provided for that purpose. Upon receipt of an application, the Director shall review a request and find whether the Project requires a Certificate of Appropriateness, pursuant to Subsection K.; a Certificate of Compatibility, pursuant to Subsection L.; or is eligible for review under Conforming Work on Contributing Elements, pursuant to Subsection I.; or Conforming Work on Non-Contributing Elements, pursuant to Subsection J. All questions of Street Visible Area are to be determined by Department of City Planning Staff. In instances where multiple applications are received, which collectively involve an impact to a Structure or feature in the Street-Visible-Area, a Certificate of Appropriateness or Certificate of Compatibility may be required for additional work.

H. Exemptions. The provisions of Section 12.20.3 shall not apply to the following:

1. The correction of Emergency or Hazardous Conditions where the Department of Building and Safety, Housing and Community Investment Department, or other enforcement agency has determined that emergency or hazardous conditions currently exist and the emergency or hazardous conditions must be corrected in the interest of the public health, safety and welfare. When feasible, the Department of Building and Safety, Housing and Community Investment Department, or other enforcement agency should consult with the Director on how to correct the hazardous condition, consistent with the goals of the Preservation Zone. However, any other work shall comply with the provisions of this section.

2. Department of Public Works improvements located, in whole or in part, within a Preservation Zone, where the Director finds:

(a) That the certified Historic Resources Survey for the Preservation Zone does not identify any Contributing Elements located within the Right-of-Way and/or where the Right-of-Way is not specifically addressed in the approved Preservation Plan for the Preservation Zone; and

(b) Where the Department of Public Works has completed the CEQA review of the proposed improvement, and the review has determined that the improvement is exempt from CEQA, or will have no potentially significant environmental impacts.

The relevant Board shall be notified of the Project, given a description of the Project, and an opportunity to comment.

3. Work authorized by an approved Historical Property Contract by the City Council.

4. Where a building, structure, Landscaping, Natural Feature or lot has been designated as a City Historic-Cultural Monument by the City Council, unless proposed for demolition. However, those properties with Federal or State historic designation which are not designated as City Historic-Cultural Monuments or do not have a City Historical Property Contract are not exempt from review under Section 12.20.3.

5. Where work consists of Repair to existing structural elements and foundations with no physical change to the exterior of a building.

6. Where work consists of interior Alterations that do not result in a change to an exterior feature.

7. Where the type of work has been specifically deemed exempt from review as set forth in the approved Preservation Plan for a specific Preservation Zone.

I. Conforming Work on Contributing Elements. Conforming Work may fall into two categories, Major Conforming Work and Minor Conforming Work. It is the further intent of this section to require Conforming Work on Contributing Elements for some Projects which may, or may not, require a building permit, including, but not limited to, changing exterior paint color, removal of significant trees or Landscaping, installation or removal of fencing, window and door replacement, changes to public spaces, and similar Projects. Conforming Work meeting the criteria and thresholds set forth in this subsection shall not require Certificates of Appropriateness set forth in Subsection K.

1. **Procedure.** Pursuant to Subsection G., the Director shall forward applications for Conforming Work on Contributing Elements to the Board for conformance review and sign off. The Board may

delegate its review authority to the Director of Planning as specified in the Preservation Plan approved for the Preservation Zone.

(a) **Application, Form and Contents.** To apply for Conforming Work on a Contributing Element, an owner shall file an application with the Department of City Planning and include all information required by the instructions on the application. Prior to deeming the application complete, the Director shall determine and, if necessary, advise the applicant of the processes to be followed and fees to be paid.

(b) **Application Fees.** The application fees for Major Conforming Work on a Contributing Element shall be as set forth in Section 19.01 F. Minor Conforming Work shall not require an application fee.

2. **Review Criteria.** A request for Conforming Work on Contributing Elements shall be reviewed for conformity with the Preservation Plan for the Preservation Zone or, if none exists, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and at least one of following conditions:

Review Criteria for Contributing Elements		
Project Scope		
(a) Minor Conforming Work	(1)	Restoration work, Rehabilitation, Maintenance, and/or Repair of architectural features on any Contributing Building, structure, Landscaping, Natural Feature or lot.
	(2)	Projects that do not require the issuance of a building permit but affect the building or site, pursuant to Section 91.106.2 of this Code.
(b) Major Conforming Work	(1)	Addition(s) to any and all structures on a lot or new Building(s) that satisfy all of the following: (a) The Addition(s) or new Building(s) result(s) in an increase of less than twenty (20) percent of the Building Coverage legally existing on the effective date of the Historic Preservation Overlay Zone; (b) The Addition(s) or new Building(s) is/are located outside of a Street Visible Area; (c) No increase in height is proposed; and (d) The Addition(s) and/or new Building does/do not involve two or more structures.
	(2)	Construction of detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure in a Street Visible Area in which the proposed square footage is equal to less than ten (10) percent of the lot area.
	(3)	Demolition of a detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure pursuant to the criteria set forth in Subsection I.2(c).
	(4)	Demolition and Reconstruction taken in response to natural disaster or to correct a hazardous condition (subject to the provisions of Public Resources Code Section 5028, where applicable).
	(5)	Correction of Code Enforcement Conditions.

(c) Where the Project consists of the Demolition of a detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure, the Director of Planning shall review a request and determine

whether such requests qualify for review under Conforming Work, based on at least one of the following considerations:

(1) It can be demonstrated that the structure was built outside of the Period of Significance for the HPOZ through building permits, or where building permits do not exist, through Sanborn Fire Insurance Maps or historic records or photographs.

(2) The Demolition of the structure will not degrade the status of the lot as a Contributing Element in the Historic Preservation Overlay Zone.

(3) The Demolition will not affect the integrity and development pattern of the district as a whole.

Any request for the Demolition of a detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure that does not meet one or more of the above criteria shall be reviewed pursuant to Certificate of Appropriateness provisions in Section 12.20.3 K.4.

3. **Time to Act.** The Board shall act on the request for Conforming Work on Contributing Elements at its next agendized Board meeting within 21 days of the Director deeming an application complete, unless the applicant and the Director mutually agree in writing to an extension of time. The applicant may request a transfer of jurisdiction to the Director if the Board fails to act within 21 days. Applications reviewed under Conforming Work shall be agendized by the Board.

4. **Certification.** The Board shall review and sign off a request for Conforming Work on Contributing Elements if it finds that the work meets the criteria as set forth in Subdivision 2., above. The Board does not have the authority to impose conditions on Conforming Work. If the Board finds that the work does not meet the criteria, as set forth in Subdivision 2., above, it shall specify in writing as to why.

5. If an application fails to conform to the criteria of Conforming Work on Contributing Elements, an applicant may elect to file for review under the Certificate of Appropriateness procedure pursuant to Subsection K.

J. Conforming Work on Non-Contributing Elements. Conforming Work may fall into two categories, Major Conforming Work and Minor Conforming Work. It is the further intent of this section to require Conforming Work on Non-Contributing Elements for some Projects which may or may not require a building permit, including, but not limited to, changing exterior paint color, removal of trees or Landscaping, installation or removal of fencing, window and door replacement, changes to public spaces, and similar Projects. Conforming Work meeting the criteria and thresholds set forth in this subsection shall not require Certificates of Compatibility set forth in Subsection L. However, an applicant not approved under Subsection J. may elect to file for a Certificate of Compatibility.

1. **Procedure.** Pursuant to Subsection G., the Director shall forward applications for Conforming Work on Non-Contributing Elements to the Board for conformance review and sign off. The Board may delegate its review authority to the Director as specified in the Preservation Plan approved for the Preservation Zone.

(a) **Application, Form and Contents.** To apply for Conforming Work on a Non-Contributing Element, an owner shall file an application with the Department of City Planning and include all information required by the instructions on the application. Prior to deeming the application complete, the Director shall determine and, if necessary, advise the applicant of the processes to be followed and fees to be paid.

(b) **Application Fees.** The application fees for Major Conforming Work on a Non-Contributing Element shall be as set forth in Section 19.01 F. of this Code. Minor Conforming Work shall not require an application fee.

2. **Review Criteria.** A request for Conforming Work on Non-Contributing Elements shall be reviewed for conformity with the Preservation Plan for the Preservation Zone, and at least one of following conditions:

Review Criteria for Non-Contributing Elements		
Project Scope		
(a) Minor Conforming Work	(1)	Rehabilitation, Maintenance, or Repair of architectural features on any Non-Contributing building, structure, Landscaping, Natural Feature or lot.
	(2)	Relocation of buildings or structures dating from the Preservation Zone's Period of Significance onto a lot designated as a Non-Contributing Element in a Preservation Zone.
	(3)	Projects that do not require the issuance of a building permit but affect the building or site, pursuant to Section 91.106.2 of this Code.
(b) Major Conforming Work	(1)	Addition(s) to any and all structures on a lot.
	(2)	Construction or Demolition of a structure located outside of a Street Visible Area.
	(3)	Construction of a detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure located in a Street Visible Area in which the proposed square footage is equal to less than ten (10) percent of the lot area.
	(4)	Relocation or Demolition of a detached garage, porte cochere, carport, storage building, tool or garden shed, or animal-keeping use structure located in a Street Visible Area.
	(5)	Correction of Code Enforcement conditions.

3. **Time to Act.** The Board shall act on a request for Conforming Work on Non-Contributing Elements at its next agendized Board meeting within 21 days of the Director deeming an application complete, unless the applicant and the Director mutually agree in writing to an extension of time. The applicant may request a transfer of jurisdiction to the Director if the Board fails to act within the 21 days. Applications reviewed under Conforming Work shall be agendized by the Board.

4. **Certification.** The Board shall review and sign off a request for Conforming Work on Non-Contributing Elements if it finds that the work meets the criteria as set forth in Subdivision 2., above. The Board does not have the authority to impose conditions on Conforming Work. If the Board finds that the work does not meet the criteria, as set forth in Subdivision 2., above, it shall specify in writing as to why.

5. If an application fails to conform to the criteria of Conforming Work on Non-Contributing Elements, an applicant may elect to file for review under the Certificate of Compatibility procedure pursuant to Subsection L.

K. Certificate of Appropriateness for Contributing Elements.

1. **Purpose.** It is the intent of this section to require the issuance of a Certificate of Appropriateness for any Project affecting a Contributing Element, except as set forth in Subdivision 2.(b), below. It is the further intent of this section to require a Certificate of Appropriateness for some Projects which may or may not require a building permit, including, but not limited to, changing exterior paint color, removal of significant trees or Landscaping, installation or removal of fencing, window and door replacement which are character-defining features of architectural styles, changes to public spaces and similar Projects. However, an applicant not approved under Subsection I. may elect to file for a Certificate of Appropriateness.

2. **Requirements.**

(a) **Prohibition.** No person shall construct, add to, alter, cause the Demolition, relocation or removal of any building, structure, Landscaping, or Natural Feature designated as contributing in the Historic Resources Survey for a Preservation Zone unless a Certificate of Appropriateness has been approved for that action pursuant to this section, with the exception of Conforming Work on Contributing Elements, which shall not require a Certificate of Appropriateness. In the event that Demolition, removal, or relocation has occurred without a Certificate of Appropriateness for Demolition, removal, or relocation having been approved for such action pursuant to Section 12.20.3 K.5. below, a Certificate of Appropriateness shall be based on the existing conditions of the Historic Resource prior to the Demolition, removal, or

relocation. No Certificate of Appropriateness shall be approved unless the plans for the construction, Demolition, Alteration, Addition, relocation, or removal conform with the provisions of this section. Any approval, conditional approval, or denial shall include written findings in support.

(b) **Conforming Work.** Nothing in this section shall be construed as to require a Certificate of Appropriateness for the ordinary Maintenance and Repair of any exterior architectural feature of a property within a Preservation Zone, which does not involve a change in design, material, color, or outward appearance. Work meeting the criteria for Conforming Work on Contributing Elements shall not require a Certificate of Appropriateness.

3. **Procedures For Obtaining a Certificate of Appropriateness.**

(a) Any plan for the construction, Addition, Alteration, Demolition, Reconstruction, relocation or removal of a building, structure, Landscaping, or Natural Feature, or any combination designated as contributing in the Historic Resources Survey for a Preservation Zone shall be submitted, in conjunction with an application, to the Department of City Planning upon a form provided for that purpose. Upon an application being deemed complete by the Director, one copy each of the application and relevant documents shall be mailed by the Department of City Planning to both the Cultural Heritage Commission and to each Board member for the Preservation Zone for evaluation.

(b) **Application Fees.** The application fees for a Certificate of Appropriateness shall be as set forth in Section 19.01 F. of this Code.

(c) **Cultural Heritage Commission and Board Recommendations.** A notice and hearing shall be completed pursuant to Subsection M. below. The Cultural Heritage Commission and the Board shall submit their recommendations to the Director as to whether the Certificate should be approved, conditionally approved or disapproved. In the event that the Cultural Heritage Commission or Board does not submit its recommendations within 30 days of the postmarked date of mailing of the application from the City Planning Department, the Cultural Heritage Commission or Board shall be deemed to have forfeited all jurisdiction in the matter and the Certificate may be approved, conditionally approved or disapproved as filed. The applicant and the Director may mutually agree in writing to a longer period of time for the Board to act.

(d) **Director and Area Planning Commission Determination.** The Director shall have the authority to approve, conditionally approve or disapprove a Certificate of Appropriateness for construction, Addition, Alteration or Reconstruction. The Area Planning Commission shall have the jurisdiction to approve, conditionally approve or disapprove a Certificate of Appropriateness for Demolition, removal or relocation.

(e) **Time to Act.** The Director or Area Planning Commission, whichever has jurisdiction, shall render a determination on any Certificate of Appropriateness within 75 days of an application being deemed complete, unless the applicant and the Director mutually consent in writing to a longer period. A copy of the determination shall be mailed to the applicant, the Board, the Cultural Heritage Commission and any other interested parties. No Certificate of Appropriateness shall be issued until the appeal period in Subsection N. has expired or until any appeal has been resolved.

(f) **Other City Approvals.** The requirements for a Certificate of Appropriateness are in addition to other City approvals (building permits, variances, etc.) or other legal requirements, such as Public Resources Code Section 5028, which may be required. The time periods specified above may be extended, if necessary, with the written mutual consent of the applicant and the Director.

(g) **Modification of an Approved Certificate of Appropriateness.** Once a

Certificate of Appropriateness becomes effective, any subsequent proposed modification to the project shall require review by the Director, who shall grant approval of the modification if he or she finds the modification to be substantially in conformance with the original approved project. If the Director finds that the proposed modification does not substantially conform with the original approved project, then the applicant shall resubmit the project for a new Certificate of Appropriateness.

(1) **Modification Procedure.** To modify an approved Certificate of Appropriateness, an applicant shall submit to the Department of City Planning plans, elevations, or details of the proposed modification and any additional information determined necessary for conformance review. The Director may forward proposed modifications to the Board and/or the Cultural Heritage Commission's Designee for consultation.

4. **Standards for Issuance of Certificate of Appropriateness for Construction, Addition, Alteration, or Reconstruction.** The Director shall base a determination whether to approve, conditionally approve or disapprove a Certificate of Appropriateness for construction, Addition, Alteration or Reconstruction on each of the following:

(a) If no Preservation Plan exists, whether the Project complies with Standards for Rehabilitation approved by the United States Secretary of the Interior considering the following factors:

(1) architectural design;

(2) height, bulk, and massing of buildings and structures;

(3) lot coverage and orientation of buildings;

(4) color and texture of surface materials;

(5) grading and site development;

(6) landscaping;

(7) changes to Natural Features;

(8) antennas, satellite dishes and solar collectors;

(9) off-street parking;

(10) light fixtures and street furniture;

(11) steps, walls, fencing, doors, windows, screens and security grills;

(12) yards and setbacks; or

(13) signs; and

(b) Whether the Project protects and preserves the Historic and architectural qualities and the physical characteristics which make the building, structure, landscape, or Natural Feature a Contributing Element of the Preservation Zone; or

(c) If a Preservation Plan exists, whether the Project complies with the Preservation Plan approved by the City Planning Commission for the Preservation Zone.

5. **Standards for Issuance of Certificate of Appropriateness for Demolition, Removal or Relocation.** Any person proposing Demolition, removal or relocation of any contributing building, structure, Landscaping, or Natural Feature within a Preservation Zone not qualifying as Conforming Work on Contributing Elements shall apply for a Certificate of Appropriateness and the appropriate environmental review.

No Certificate of Appropriateness shall be issued for Demolition, removal or relocation of any building, structure, Landscaping, Natural Feature or lot within a Preservation Zone that is designated as a Contributing Element, and the application shall be denied unless the Owner can demonstrate to the Area Planning Commission that the Owner would be deprived of all economically viable use of the property. In making its determination, the Area Planning Commission shall consider any evidence presented concerning the following:

(a) An opinion regarding the structural soundness of the structure and its suitability for continued use, renovation, Restoration or Rehabilitation from a licensed engineer or

architect who meets the Secretary of the Interior's Professional Qualification Standards as established by the Code of Federal Regulation, 36 CFR Part 61. This opinion shall be based on the Secretary of the Interior's Standards for Architectural and Engineering Documentation with Guidelines;

(b) An estimate of the cost of the proposed Alteration, construction, Demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendation of the Board for changes necessary for it to be approved;

(c) An estimate of the market value of the property in its current condition; after completion of the proposed Alteration, construction, Demolition, or removal; after any expenditure necessary to comply with the recommendation of the Board for changes necessary for the Area Planning Commission to approve a Certificate of Appropriateness; and, in the case of a proposed Demolition, after renovation of the existing structure for continued use;

(d) In the case of a proposed Demolition, an estimate from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in Rehabilitation as to the economic feasibility of Restoration, renovation or Rehabilitation of any existing structure or objects. This shall include tax incentives and any special funding sources, or government incentives which may be available.

In a case where Demolition, removal, or relocation of any Contributing Element, without a Certificate of Appropriateness for Demolition, Removal, or Relocation has occurred, Section 12.20.3 K.5. shall not apply. Procedures in Sections 12.20.3 K.1. - 4. and/or Section 12.20.3 Q. shall apply.

L. Certificate of Compatibility for Non-Contributing Elements.

1. **Purpose.** The intent of this section is to ensure compatibility of Non-Contributing Elements with the character of the Preservation Zone and to ensure that any construction or Demolition work is undertaken in a manner that does not impair the essential form and integrity of the Historic character of its environment.

(a) A request for a Certificate of Compatibility shall be reviewed for conformity with the Preservation Plan for the Preservation Zone and shall consist of at least one of the following project types:

(1) Where the Project on a Non-Contributing Element does not qualify as Conforming Work;

(2) Where construction or Demolition of a structure is done in a Street Visible Area on a lot designated as a Non-Contributing Element;

(3) Where structures not dating from the Preservation Zone's period of significance are replaced or relocated onto a lot designated as a Non-Contributing Element.

(b) Other types of work solely involving Non-Contributing Elements, including the relocation of buildings or structures dating from the Preservation Zone's period of significance onto a lot designated as a Non-Contributing Element, are eligible for review under Conforming Work on Non-Contributors as set forth in Subsection J. The Director shall review a request, pursuant to Subsection G. and find whether the application is eligible for Conforming Work on Non- Contributors as outlined in Subsection J. or requires a Certificate of Compatibility. An applicant not approved under Subsection J. may elect to file for a Certificate of Compatibility.

2. **Prohibition.** No person shall construct, add to, alter, cause the Demolition, relocation or removal of any building, structure, Landscaping, or Natural Feature designated as a Non-Contributing Element or not listed in the Historic Resources Survey for a Preservation Zone unless a Certificate of Compatibility has been approved for that action pursuant to this section. Additions and Alterations may be exempt from this section provided they meet the criteria in Subsection J. No Certificate of Compatibility shall be approved unless the plans for the construction, Demolition, Alteration, Addition, relocation, or removal conform with the provisions of this section. Any approval, conditional approval, or denial shall include written justification pursuant to Section 12.20.3 L.4.

3. **Procedures For Obtaining A Certificate of Compatibility.**

(a) Plans shall be submitted, in conjunction with an application, to the Department of City Planning upon a form provided for that purpose. Upon an application being deemed complete by the Director, one copy of the application and relevant documents shall be mailed by the Department of City Planning to each Boardmember of the Preservation Zone for evaluation.

(b) **Application Fees.** The application fees for a Certificate of Compatibility shall be as set forth in Section 19.01 F. of this Code.

(c) **Cultural Heritage Commission and Board Recommendations.** A notice and hearing shall be completed pursuant to Subsection M., below. The Cultural Heritage Commission and the Board shall submit their recommendations to the Director as to whether the Certificate of Compatibility should be approved, conditionally approved, or disapproved within 30 days of the postmarked date of mailing of the application from the City Planning Department. In the event the Cultural Heritage Commission or the Board does not submit its recommendation within 30 days, the Cultural Heritage Commission or the Board shall forfeit all jurisdiction. The applicant and the Director may mutually agree in writing to a longer period of time for the Board to act.

(d) **Director Determination.** The Director shall have the authority to approve, conditionally approve or disapprove a Certificate of Compatibility.

(e) **Time to Act.** The Director shall render a determination on a Certificate of Compatibility within 75 days of an application being deemed complete, unless the applicant and the Director mutually consent in writing to a longer period. A copy of the determination shall be mailed to the applicant, the Board, and any other interested parties. No permits shall be issued for the subject Certificate of Compatibility until the appeal period, as set forth in Subsection N., has expired or until any appeal has been resolved.

(f) **Other City Approvals.** The requirements for a Certificate of Compatibility are in addition to other City approvals (building permits, variances, etc.) and other legal requirements, such as Public Resources Code Section 5028, which may be required. The time periods specified above may be extended, if necessary, with the written mutual consent of the applicant and the Director.

(g) **Modification of an Approved Certificate of Compatibility.** Once a Certificate of Compatibility becomes effective, any subsequent proposed modification to the project shall require review by the Director, who shall grant approval of the modification if he or she finds the modification to be substantially in conformance with the original approved project. If the Director finds that the proposed modification does not substantially conform with the original approved project, then the applicant shall resubmit the project for a new Certificate of Compatibility.

(1) **Modification Procedure.** To modify an approved Certificate of Compatibility, an applicant shall submit to the Department of City Planning plans, elevations, or details of the proposed modification and any additional information determined necessary for conformance review. The Director may forward proposed modifications to the Board and/or the Cultural Heritage Commission's Designee for consultation.

4. **Standards for Issuance of Certificate of Compatibility for New Building Construction or Replacement, and the Relocation of Buildings or Structures Not Dating from the Preservation Zone's Period of Significance Onto a Lot Designated as a Non-Contributing Element.** The Director shall base a determination whether to approve, conditionally approve or disapprove a Certificate of Compatibility on each of the following:

(a) If no Preservation Plan exists, whether the following aspects of the Project do not impair the essential form and integrity of the Historic character of its surrounding built environment, considering the following factors;

(1) architectural design;

(2) height, bulk, and massing of buildings and structures;

(3) lot coverage and orientation of buildings;

(4) color and texture of surface materials;

(5) grading and lot development;

(6) Landscaping;

(7) changes to Natural Features;

(8) steps, walls, fencing, doors, windows, screens, and security grills;

(9) yards and setbacks;

(10) off street parking;

(11) light fixtures and street furniture;

(12) antennas, satellite dishes and solar collectors; or

(13) signs.

New construction shall not destroy Historic features or materials that characterize the property. The design of new construction shall subtly differentiate the new construction from the surrounding Historic built fabric, and shall be contextually compatible with the massing, size, scale, and architectural features of nearby structures in the Preservation Zone; or

(b) Whether the Project complies with the Preservation Plan approved by the City Planning Commission for the Preservation Zone.

5. **Certificates of Compatibility for the Demolition of Non-Contributing Elements.** After notice and hearing pursuant to Subsection M. below, the Board shall submit its comments on a request for Demolition of a Non-Contributing Element, considering the impact(s) of the Demolition of the Non-Contributing Element to the essential form and integrity of the Historic character of its surrounding built environment within 30 days of the postmarked date of mailing of the application from the City Planning Department. In the event the Board does not submit its comment within 30 days, the Board shall forfeit all jurisdiction. The applicant and the Director may mutually agree in writing to a longer period of time for the Board to comment.

(a) In a case where Demolition of any Non-Contributing Element, without a Certificate of Compatibility for the Demolition of Non-Contributing Elements or permit has occurred, Section 12.20.3 L.5. shall not apply. Procedures in Sections 12.20.3 L.1. - 4. and/or Section 12.20.3 Q. shall apply.

M. Notice and Public Hearing. Before making its recommendation to approve, conditionally approve or disapprove an application pursuant to this section for a Certificate of Appropriateness or Certificate of Compatibility, the Board shall hold a public hearing on the matter. The applicant shall notify the Owners and occupants of all properties abutting, across the street or alley from, or having a common corner with the subject property at least ten days prior to the date of the hearing. Notice of the public hearing shall be posted by the applicant in a conspicuous place on the subject property at least ten days prior to the date of the public hearing.

(1) A copy of the Board's recommendation pursuant to Subsection K.3.(b) regarding a Certificate of Appropriateness or Subsection L.3.(b) regarding a Certificate of Compatibility shall be sent to the Director.

(2) A copy of the final determination by the Director, or Area Planning Commission shall be mailed to the Board, to the Cultural Heritage Commission, to the applicant, and to other interested parties.

N. Appeals. For any application for a Certificate of Appropriateness pursuant to Subsection K. or a Certificate of Compatibility pursuant to Subsection L., the action of the Director or the Area Planning Commission shall be deemed to be final unless appealed. No Certificate of Appropriateness or Certificate of Compatibility, shall be deemed approved or issued until the time period for appeal has expired.

(1) An initial decision of the Director is appealable to the Area Planning Commission

(2) An initial decision by the Area Planning Commission is appealable to the City Council.

An appeal may be filed by the applicant or any aggrieved party. An appeal may also be filed by the Mayor

or a member of the City Council. Unless a Board member is an applicant, he or she may not appeal any initial decision of the Director or Area Planning Commission as it pertains to this section. An appeal shall be filed at the public counter of the Planning Department within 15 days of the date of the decision to approve, conditionally approve, or disapprove the application for Certificate of Appropriateness or Certificate of Compatibility. The appeal shall set forth specifically how the petitioner believes the findings and decision are in error. An appeal shall be filed in triplicate, and the Planning Department shall forward a copy to the Board and the Cultural Heritage Commission. The appellate body may grant, conditionally grant or deny the appeal. Before acting on any appeal, the appellate body shall set the matter for hearing, giving a minimum of 15 days' notice to the applicant, the appellant, the Cultural Heritage Commission, the relevant Board and any other interested parties of record. The failure of the appellate body to act upon an appeal within 75 days after the expiration of the appeal period or within an additional period as may be agreed upon by the applicant and the appellate body shall be deemed a denial of the appeal and the original action on the matter shall become final.

O. Authority of Cultural Heritage Commission not Affected. Notwithstanding any provisions of this section, nothing here shall be construed as superseding or overriding the Cultural Heritage Commission's authority as provided in Los Angeles Administrative Code Section 22.171, et seq.

P. Publicly Owned Property. The provisions of this section shall apply to any building, structure, Landscaping, Natural Feature or lot within a Preservation Zone which is owned or leased by a public entity to the extent permitted by law.

Q. Enforcement. The Department of Building and Safety, the Housing and Community Investment Department, or any successor agencies, whichever has jurisdiction, shall make all inspections of properties which are in violation of this section when apprised that work has been done or is required to be done pursuant to a building permit. Violations, the correction of which do not require a building permit, shall be investigated and resolved jointly by the Planning Department, the Department of Building and Safety, the Housing and Community Investment Department, or any successor agencies, whichever has jurisdiction, and if a violation is found, the Planning Department may then request the Department of Building and Safety, the Housing and Community Investment Department or any successor agencies to issue appropriate orders for compliance. Any person who has failed to comply with the provisions of this section shall be subject to the provisions of Section 11.00 (m) of this Code. The Owner of the property in violation shall be assessed a minimum inspection fee, as specified in Section 98.0412 of this Code for each site inspection. No building permit shall be cleared by the Planning Department while an outstanding violation exists, regardless of whether a building permit is required or not for the violation.

R. Demolition of Buildings without a Permit. Any Demolition or relocation of a Contributing or Non-Contributing Element, or a portion thereof, done without a building permit and Certificate of Appropriateness or Certificate of Compatibility approvals pursuant to Sections 12.20.3 K.5. and 12.20.3 L.5., shall be reviewed by the Director of Planning in accordance with the provisions of Section 12.20.3 S.

S. Preliminary Evaluation of Demolition or Relocation without Permit.

1. **Purpose.** The purpose of this subsection is to require the documentation of the loss of historic features as a result of unpermitted construction or Demolition activities, relocation, neglectful ownership, or man-made disaster.

2. **Prohibition.** Where Demolition or relocation to all or portions of a Contributing or Non-Contributing Element has occurred without the necessary approvals, the provisions of Section 12.20.3 K.5. (COA-DEM) or 12.20.3 L.5. (CCMP) shall not apply. Upon completion of a Preliminary Evaluation of Demolition or Relocation without Permit, and Section 91.106.4.1(10) proceedings by the Department of Building and Safety, an application for Certificate of Appropriateness or Certificate of Compatibility shall be reviewed in accordance with the provisions of Sections 12.20.3 K. and 12.20.3 L., whichever is applicable.

3. **Procedures.**

(a) **Evaluation.** The Director of Planning or his or her designee can initiate review on the Demolition or relocation of a structure, in whole or in part, commenced prior to the issuance of a building permit. During the investigation, all work on the site shall cease and an order to comply shall be issued per Section 12.20.3 Q. Review by the Director shall include, but is not limited to, documentation of the structure(s) as it (they) existed at the time of the Historic Resources Survey, permit history research, site visits, documentation of the loss of building features, identification of salvageable features,

and evaluation of the demolition's impact on the historic resource.

(b) **Evaluation Fees.** Fees for the preliminary evaluation will be assessed pursuant to Section 19.01 F. of this Code.

4. **Notice.** A copy of the evaluation shall be mailed to the Department of Building and Safety, the applicant, the Board, Council Office, and any other interested parties.

5. **Proceedings Pursuant to Los Angeles Municipal Code Section 91.106.4.1(10).** Upon completion of the evaluation, the matter shall be referred to the Department of Building and Safety for investigation and enforcement pursuant to Section 91.106.4.1(10). The Department of Building and Safety shall be authorized to withhold development permits on said property for five years if it determines that demolition occurred in violation of Section 91.106.4.1(10). Any person who has failed to comply with the provisions of Section 12.20.3 K.5. or 12.20.3 L.5. shall be subject to the provisions of Section 11.00 (l) of this Code.

6. During the Section 91.106.4.1(10) proceedings and the five-year penalty period, the property owner shall be responsible for protecting any features of the original structure which remain intact, securing the property from vandalism and theft, and keeping the property free of other nuisances.

T. Injunctive Relief. Where it appears that the Owner, occupant or person in charge of a building, structure, Landscaping, Natural Feature, lot or area within a Preservation Zone threatens, permits, is about to do or is doing any work or activity in violation of this section, the City Attorney may forthwith apply to an appropriate court for a temporary restraining order, preliminary or permanent injunction, or other or further relief as appears appropriate.

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91.106.4.4.3. Unfinished Buildings or Structures. Whenever the department determines by inspection that work on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period of 180 days or more, the owner of the property upon which such structure is located, or other person or agent in control of said property, upon receipt of notice in writing from the department to do so, shall, within 90 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion, or shall remove or demolish the building or structure within 180 days from the date of the written notice.

91.106.4.5. Permits for Historical and Cultural Buildings. The department shall not issue a permit to demolish, alter or remove a building or structure of historical, archaeological or architectural consequence if such building or structure has been officially designated, or has been determined by state or federal action to be eligible for designation, on the National Register of Historic Places, or has been included on the City of Los Angeles list of historic cultural monuments, without the department having first determined whether the demolition, alteration or removal may result in the loss of or serious damage to a significant historical or cultural asset. If the department determines that such loss or damage may occur, the applicant shall file an application and pay all fees for the California Environmental Quality Act Initial Study and Check List, as specified in Section 19.05 of the Los Angeles Municipal Code. If the Initial Study and Check List identifies the historical or cultural asset as significant, the permit shall not be issued without the department first finding that specific economic, social or other considerations make infeasible the preservation of the building or structure.

91.106.4.5.1. Notification of Demolition. (Added by Ord. No. 183,312, Eff. 1/12/15.) The Department shall not issue a building permit for demolition of a building or structure for which the original building permit was issued more than 45 years prior to the date of submittal of the application for demolition preinspection, or where information submitted with the application indicates that the building or structure is more than 45 years old based on the date the application is submitted, without having first done the following at least 30 days prior to issuance of the demolition of building or structure permit:

1. The Department shall send written notices of the demolition preinspection application by U.S. mail to the abutting property owners and the Council District Office of the site for which a demolition preinspection has been proposed for a building or structure.

2. The applicant shall post, in a conspicuous place near the entrance of the property where demolition will occur, a public notice of the application for demolition preinspection.

91.106.4.5.2. (Added by Ord. No. 183,312, Eff. 1/12/15.) The applicant seeking the permit shall provide the Department with the names and addresses of all persons entitled to receive notice pursuant to Section 91.106.4.5.1.

91.106.4.5.3. (Added by Ord. No. 183,312, Eff. 1/12/15.) The Department shall collect a fee in the amount of $60.00 when an application for the demolition of a building or structure described in Section 91.106.4.5.1 is filed with the Department. This fee shall be charged in addition to applicable preinspection fees set forth at Section 91.107.3.2 of this Code.

91.106.4.5.4. (Added by Ord. No. 183,312, Eff. 1/12/15.) Sections 91.106.4.5.1, 91.106.4.5.2 and 91.106.4.5.3 shall not apply to a building or structure as described in 91.106.4.5.1 that is the subject of a pending zoning application for a specific plan filed prior to the effective date of this ordinance. In the event a specific plan for such property is not approved within 3 years from the effective date of this ordinance, such property shall be required to comply with the provisions of Sections 91.106.4.5.1, 91.106.4.5.2 and 91.106.4.5.3. Insofar as the provisions of Sections 91.106.4.5.1, 91.106.4.5.2, and 91.106.4.5.3 are different than or in conflict with the provisions of a specific plan, the provisions of the specific plan shall govern.

91.106.4.5.5. (Added by Ord. No. 183,312, Eff. 1/12/15.) Sections 91.106.4.5.1, 91.106.4.5.2 and 91.106.4.5.3 shall not apply to a building or structure as described in 91.106.4.5.1 that will be demolished as part of a project that was subject to California Environmental Quality Act review and for which the corresponding discretionary project approval was issued prior to submittal of the application for demolition preinspection.

91.106.4.6. Notification and Posting in a Hillside Grading Area.

91.106.4.6.1. In any area designated as a hillside grading area, the department shall not issue (1) a building permit for construction of a building with over 500 square feet of floor area, or (2) a building permit for any addition to an existing building which adds over 500 square feet of floor area, or (3) a grading permit for the grading of more than 1,000 cubic yards of earth materials without having first done the following at least 10 days prior to issuance of the building or grading permit:

CERTIFICATE OF SERVICE

I hereby certify, that on March 23, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: March 23, 2018

/s/ David J. Michaelson
David J. Michaelson