LEECHTISHMAN
LEECH TISHMAN FUSCALDO & LAMPL

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VIA ELECTRONIC MAIL AND EXPEDITED MAIL

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Re: Town of Superior's Response to Your August 16, 2023, Letter Regarding Aviation Noise and Emissions.

Dear Commissioners Kerr, Kraft-Tharp, and Dahlkemper; and Co-Directors Bishop and Burns,

Leech Tishman Fuscaldo & Lampl represents the Town of Superior, Colorado (the "Town"). This letter represents the Town's response to the County's (the "County") August 16, 2023, letter.

I. The County Must Address the Health and Safety Problems Stemming from RMMA.

The Town was glad to see that the County believes "the safety and welfare of the surrounding community is of utmost concern," and that it is "committed to seeking reasonable, legal solutions to the impacts of airport operations on surrounding communities." It is unfortunate, however, that the County shoots down the Town's proposed solutions, offering no solutions of its own.

As the Town pointed out in its July 21, 2023, letter, single-engine propeller planes operated by flight schools based at Rocky Mountain Metropolitan Airport (RMMA) have been polluting the Town with noise and lead particulates. This pollution—which is increasing at an alarming rate—must stop. RMMA should do everything in its power to limit the ability of flight schools to conduct training flights over residential areas, schools, or hospitals. The training flights can take-off and land at RMMA, but the training operations and tight loop patterns over densely populated residential areas must stop. The Town has been patient and has offered methods for the County's consideration, but the pollution continues, and the County has proposed no solutions to the problem.

II. Part 150 Study and Noise Compatibility Program.

Despite the County's comment in its August letter, that it would not "expend resources on" a Part 150 Study (Letter, p.2), it is the Town's understanding that the County is undertaking a Part 150 Study and the development of a Noise Compatibility Program. The Town is glad that the County is taking the recommendation of the Town and other stakeholders by pursuing a Part 150 Study that will offer benefits to both RMMA and its surrounding communities. The Town would appreciate, however, a confirmation in writing from the County indicating that it is planning to conduct a Part 150 Study and develop an NCP.

As the County is aware, the Federal Aviation Regulations (FAR) lay out the far-ranging strategies that airports may consider as part of an NCP after a Part 150 study is completed.

At a minimum, the operator [the County in this case] shall analyze and report on the following alternatives, subject to the constraints that the strategies are appropriate to the specific airport (for example, an evaluation of night curfews is not appropriate if there are no night flights and none are forecast):

(1) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations.

(2) The construction of barriers and acoustical shielding, including the soundproofing of public buildings.

(3) The implementation of a **preferential runway system**.

(4) The use of flight procedures (including the modifications of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.

(5) The implementation of any restriction on the use of airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to—

(i) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;
(ii) Capacity limitations based on the relative noisiness of different types of aircraft;
(iii) Requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA;
(iv) **Landing fees** based on FAA certificated or estimated noise emission levels or on time of arrival; and
(v) Partial or complete **curfews**.

(6) Other actions or combinations of actions which would have a beneficial noise control or abatement impact on the public.

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

14 C.F.R. § B150.7(b). As indicated by the above list, the available mitigation options include preferential runway system, landing fees, and curfews, which were all mentioned by the Town. While limiting touch-and-go operations or limiting them to certain hours is not specifically mentioned in the above list, they would fall under strategy (6) above.

As one of the primary stakeholders in the Part 150 process and to ensure that the County pursues all available options and benefits from a perspective from people who deal with the negative impacts of RMMA daily, the Town requests that it be included in the discussion about the scope of the Part 150 Study and the NCP. In addition, the Town requests all documentation regarding the County's undertaking of a Part 150 Study and development of an NCP. The Town needs a seat at the table given how directly RMMA impacts it. The Town needs to ensure that the County conducts a Part 150 study and develops an NCP that includes elements that will abate aviation noise and emissions over the Town.

III. Responses to the County's August Letter.

Although the Town does not find it productive to address each of the inaccurate statements in the County's response, the Town is compelled to respond to a few points.

1. ANCA does not apply to general aviation airports.

Primary among the County's misunderstanding of the law is the belief that the Airport Noise and Capacity Act ("ANCA") applies to aircraft that use RMMA.

Congress enacted ANCA (P.L. 101-508) in 1990, during a time when airlines and the aviation industry complained that community noise concerns led to "uncoordinated and inconsistent restrictions on aviation" that, the industry asserted, were impeding the nation's airport system. The emphasis was on scheduled service and the airlines' access to airports anytime they needed. Because of intense lobbying, Congress called for establishment of a national aviation noise policy, the phase out of "stage 2" aircraft, and the eventual phase out of "stage 3" aircraft. It also prohibited state and local governments from imposing "access restrictions" on stage 2 and stage 3 aircraft while they were being phased out. See 49 U.S.C. § 47524.

The terms "stage 2" and "stage 3" aircraft apply primarily to larger, jet-powered civil aircraft over 75,000 pounds. See 14 C.F.R., Part 36, "Noise Standard: Aircraft Type and Airworthiness Certification." Since the access-restriction prohibition[1] is tied to the noise standards for stage 2 and stage 3 aircraft, ANCA's access restriction prohibition does not apply to general aviation aircraft not considered "stage 2" or "stage 3" aircraft. General aviation aircraft – small propeller-driven aircraft – have their own noise standards in 14 C.F.R., Part 36, Subpart F, but ANCA contains no prohibition against access restrictions for them either in the statute or in the regulations. Thus, ANCA does not apply to most aircraft that operate at RMMA, and it does not apply to virtually all aircraft conducting touch-and-go operations.

2. Landing fees are a legal and acceptable strategy.

It is not illegal to assess landing fees. Landing fees are not uncommon at general aviation airports and the proceeds are used to cover operating costs, infrastructure maintenance, and other expenses. As described above, if they are included in an approved NCP, they are an acceptable strategy to mitigate noise, including landing

[1] The County's letter also mentions conducting a Part 161 study in order to comply with ANCA. However, like access restrictions, Part 161 studies are tied to the noise standards set for "stage 2" and "stage 3" aircraft, and thus have no relevance to aircraft conducting touch-and-go operations at RMMA. *See* 14 C.F.R. § 161.3.

fees intended to decrease operations at an airport. See 14 C.F.R. § B150.7(b)(5)(iv). The decision to charge landing fees at a general aviation airport is within the authority of the airport owner/operator. Landing fees can vary widely depending on the airport's size, location, and services provided. The County's requirement to be and remain self-sustaining under the FAA's grant assurances can be met through reasonable landing fees.

3. Curfews may be available at general aviation airports.

As explained above, ANCA does not apply to general aviation. It only restricts the prohibition of access restrictions for commercial aircraft considered stage 2 or higher. And while curfews in general are prohibited by the Supreme Court's ruling in *City of Burbank v. Lockheed Air Terminal, Inc.,* 411 U.S. 634, 633-34 (1973), that, too, is of limited value for this situation. The Supreme Court said that local restrictions of commercial aircraft by curfews were pre-empted because of the effect on interstate commerce and the federal government's interest in maintaining interstate commerce. *Id.* The same cannot be said of placing a curfew on touch-and-goes from a general aviation airport or other local operations. According to Airnav.com (https://www.airnav.com/airport/KBJC), 58% of RMMA's aircraft operations are "local general aviation," and that means an average of 416 operations a day (out of an average of 718 operations a day) start and finish at RMMA. Neither ANCA nor *Burbank* was meant to prohibit restrictions of this type of aircraft operations, which do not impact interstate commerce. Indeed, FAA regulations specifically allow curfews to be included as part of an NCP. 14 C.F.R. § B150.7(b)(5)(v).

4. Touch-and-go operations may be restricted by an airport owner/operator.

Broadly speaking, general aviation airports have the authority to establish operational rules and restrictions, including those related to touch-and-go operations. The ability to restrict touch-and-go operations is well within the purview of the airport management or the local airport authority. Although a range

of factors may lead to the implementation of such restrictions on touch-and-go operations, noise abatement is one of the primary reasons airports restrict such operations. Touch-and-go operations contribute significantly to noise in the surrounding community and consequently, they may properly be restricted.[2]

5. Preferential runway systems are a legal part of noise abatement at an airport.

Airports can close runways at night or use preferred runways for assorted reasons, including maintenance, repairs, or to abate noise. Additionally, airports may use preferential runways during specific hours or under certain conditions. These practices are often part of the airport's operational procedures and are designed to balance the needs of the airport, the community, and regulatory requirements. Proactive coordination with the tower and users will ensure that any perceived safety issue with a preferential runway system is eliminated. This type of restriction is often implemented as part of a Noise Compatibility Program developed as part of a Part 150 study. See 14 C.F.R. § B150.7(b)(3).

[2] The County states that the Town's request to "limit 'touch-and-go landings' falls within the purview of ANCA." This is not correct.

IV. Conclusion.

While the Town is glad that the County continues to work with the Noise Roundtable, the Town and other stakeholders, the County must stop the noise and air pollution now by doing everything it can to address the issue of persistent and incessant flight training over residential areas and schools. The Town stands ready to discuss these viable solutions with the County so a "reasonable, legal solution to the impacts of airport operations on surrounding communities" can be reached.

If you have any questions or comments, please feel free to call me or send me an email.

Very truly yours,

Steven M. Taber