

NEIGHBORHOOD NOISE

CITIZENS AGAINST AIRPORT POLLUTION, P. O. BOX 26142, SAN JOSE, CA 95159 (866) 263-4163 WINTER 2003

Happy Holidays and Best Wishes for a Quiet 2004!

Airport Curfew Protected with New City Guidelines

By City Councilmember Ken Yeager

Several weeks ago it was announced that the Federal Aviation Administration approved San Jose's proposed changes to our airport curfew.

The main revision to the curfew is that nighttime restrictions will now be based on noise rather than weight. The other revision to the curfew is that the City will now have the ability to assess fines for violations.

I have been involved in airport noise issues for many years. Prior to serving on the City Council, I chaired the Airport Curfew Monitoring Committee. Along with many neighborhood leaders, I have always been worried that the curfew was in jeopardy of being overturned. Our fears increased when a federal judge ruled that Oracle billionaire Larry Ellison be allowed to land his Gulfstream jet in the curfew hours because it was quieter than planes that already were permitted to land due to their weight of under 75,000 pounds.

After the court decision, the Mayor and Council were reminded how fragile the curfew was. When the owners of the Sabercats also wanted to land during the late night hours, we knew that if the federal judge granted the request, then the curfew would for all practical purposes be meaningless.

As the councilmember whose residents are impacted by the airport, I strongly argued for working with the FAA to change our curfew. The Council agreed on this action, even though the 1990 federal Airport Noise and Capacity Act limits the ability of local airports to adopt

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Airport Curfew Amended

Our airport curfew was amended last month and we can only hope that city projections for nighttime noise intrusions are more accurate than other noise projections in the past.



Legal Analysis of the Curfew

The city of San Jose recently passed an ordinance and City Council resolution modifying the existing San Jose Noise Control Program on an emergency basis. These measures culminate years of debate over the legality and enforceability of the "Airport Curfew." For over a decade, CAAP has made the argument to the City of San Jose that the existing noise control program (the curfew) was illegal and unenforceable. Nevertheless, the city has over the years always maintained that our curfew was legal and enforceable. Under federal law, local restrictions proposed to control noise at airports must be reasonable,

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What Will the Changes Mean?

For more than 30 years, the authors of this letter have had a personal interest in the noise emanating from the San Jose Airport because we live and work in the neighborhood. We were invited to a November 3 meeting of CAAP whose purpose was to discuss the new "Emergency Ordinance" just passed by the City Council. District 6 Councilman, Ken Yeager, and the city's legal advisor, Kevin Fisher, attended the meeting with about 20 citizens. The ordinance under discussion "amends and restates the curfew hours and aircraft restrictions for the San Jose Airport".

The general consensus at the meeting was the desire to strike a balance between the airport as a good neighbor and the need for minimal noise intrusion on the neighborhoods surrounding the airport. The notion of average sound levels and related terms described in the new ordinance sounded counter-intuitive because averages are misleading and often used to blur the reality of environmental problems.

Our two main concerns that evening were:
A. The ambiguity about the measurement of aircraft noise using the mysterious 89 EPNdb standards. (Effective Perceived Noise Decibel)

B. The potential for expanding the noise contour currently limited to 65 CNEL (Community Noise Equivalent Levels) (See Noise Contour Map, Page 4)

Following the meeting, we did an internet search and found 3 useful sources- San Jose Airport, the F.A.A., and our favorite, a citizen website covering the John Wayne Airport in Burbank. The most interesting observation was a quote from the last source....

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new curfews or add additional restrictions to existing curfews. I knew from attending national airport noise conferences that no city had been able to persuade the FAA to alter an existing curfew regulation.

The City Attorney and the Director of Aviation worked with the FAA for over a year to see what could be done. Fortunately, in late October, the Council was informed that the FAA had agreed to the City's proposal to change the curfew criteria from weight based to noise based.

Planes with a certified noise level of 89 decibels or lower will be allowed to take off and land during the curfew hours of 11:30 PM to 6:30 AM. The 89 EPNdB level was determined in an attempt to duplicate the existing noise impact contour.

All types of commercial jets that fly into Mineta San Jose International Airport except two remain excluded from flying in the curfew hours. Under the new rules to the curfew, any aircraft permitted to takeoff or land during the old curfew hours would still be permitted to perform those operations under the new noise-based curfew.

Equally important to the long-term success San José's curfew program is the ability to fine airlines and aircraft operators for curfew violations. For the first time, the Director of Aviation will have the authority to issue administrative citation fines of \$2,500 to anyone responsible for each curfew violation.

I am very pleased with the changes to our Airport Curfew and believe this is an important victory for our neighborhoods. The new criteria helps protect our curfew from further legal challenges and ensures that the quality of life San José residents have come to expect can be enjoyed for years to come.

Should you have on concerns on this issue, or simply want additional information, I ask that you contact my office at (408) 277-5166. Additionally, I can be reached via email at Ken.Yeager@sanjoseca.gov or through my website at <http://www.ci.san-jose.ca.us/council/dist6/>.

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non-discriminatory, and not unduly burdensome on interstate commerce. For a variety of technical and substantive reasons, San Jose's noise control program was seriously flawed. However, this small fact was conveniently swept under the rug during the planning for the expansion of San Jose International.

Under pressure from the prospect of the Federal Court in San Jose declaring the curfew invalid, the City negotiated with the Federal Aviation Administration to modify the noise control program. This secret negotiation has been ongoing for at least a year. CAAP representatives were consulted for advice as to whether such an undertaking was worthwhile. It was CAAP's judgment that a negotiation with the FAA seeking approval of a new curfew was, all things considered, the best alternative.

According to the City of San Jose, the new noise control program will provide citizens with substantially the same noise control benefits as the "old curfew." This remains to be seen. The factual assumptions relied upon by the city to support this conclusion are somewhat suspect. However, all in all, the curfew (while perhaps weaker) is enforceable. This is arguably a huge improvement from our old curfew.

The technical terms of the new curfew will allow aircraft whose average noise is equal to or lower than 89 EPNdB to operate at San Jose International without restriction.

At present, it is too early to predict what this means to the quality of life in the San Jose neighborhoods. However, one thing seems certain, that without the new noise control program, the quality of life in San Jose neighborhoods would be seriously eroded. Special credit should be given to Councilman Ken Yeager for his hard work in attempting to protect our neighborhoods. If the predictions of the city prove to be accurate, the quality of life in San Jose neighborhoods surrounding the airport should not be seriously affected in the future. **Only time will tell.**

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"CNEL is a calculated average over a 24 hour period...A deafening explosion on an otherwise quiet day will yield a low CNEL calculation due to averaging."

We obtained additional information on jet aircraft noise and the curfew from Kevin Fisher, Senior Deputy City Attorney, and Frank Sweeney, science and aviation writer at the San Jose Mercury News. The essence of what we learned from these sources was that noise intrusion from night-time flights is the main uncertainty in the near future for the San Jose Airport.

So the question seems to be---how many middle-of-the-night take-offs should airport neighbors tolerate? The loudest daytime take-off will sound more intense in the quiet of the night. The question before the city is how to convince the jet owners that good public relations will come from keeping the night quiet between 11:30pm to 6:30am. A middle-of-the-night take-off is counted as 10 daytime flights; therefore, if enough night flights happen, the 65 CNEL contour line will increase. Such an increase is prohibited by state land use laws and the city master plan. We urge citizens to make their voices heard by demanding that the city negotiate from the moral high ground on airport noise issues. We feel that it is in the best interest of the city to minimize nighttime flights.

by Frank R. Schiavo (retired San Jose State Environmental Studies teacher)

by Edward L.Hodges (retired Hoover Middle School Science teacher)

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Mineta San José International Airport - the Ins and Outs

Many of us airport neighbors are envious of the new and successful direct BART and BART/CalTrain link to San Francisco International Airport ("SFO"). We have long been seeking a commitment from San Jose City government and the management at Mineta San José International Airport (SJC) for non-road connections between the existing VTA light rail line and the CalTrain station (and hoped for future BART link) in Santa Clara. When one explores the SJC website at <http://www.sjc.org/improve.html> one certainly sees a commitment to improving road access, but there is no mention on the about non-road access plans.

I was encouraged after a recent conversation with Cathy Gaskell, Ombudsman for the airport's Neighborhood Services group. It seems that non-road access to and from the airport is not a dead issue. Cathy informed me that among the features planned for the future Central Terminal is a gateway for future non-road connections to BART/CalTrain and/or VTA light rail. The BART/CalTrain people-mover would most likely route around the North end of the airport. A link to light rail would be more direct. Since neither of these links is funded yet, there are no further details. The Central Terminal is being planned to open approximately 2009, so there is time to influence decisions about access options!

If experience teaches us anything, it is that funds for such projects will not be forthcoming until a committed public succeeds in gaining firm support from their local leaders, and thus causing the various agencies involved in planning and funding regional transportation systems to make it happen. In the next article, I will provide a suggested contact list and tactics to promote a public commitment to transportation solutions to the airport that will leverage other-than-road systems and best serve many future generations and us.

Meanwhile, SJC Airport management could demonstrate their interest in such solutions by adding to their website a section on non-road transportation options and plans, and keeping it updated. This would reassure many of us that a complete and efficient transportation system is being planned for the airport.

by Jim Lynch

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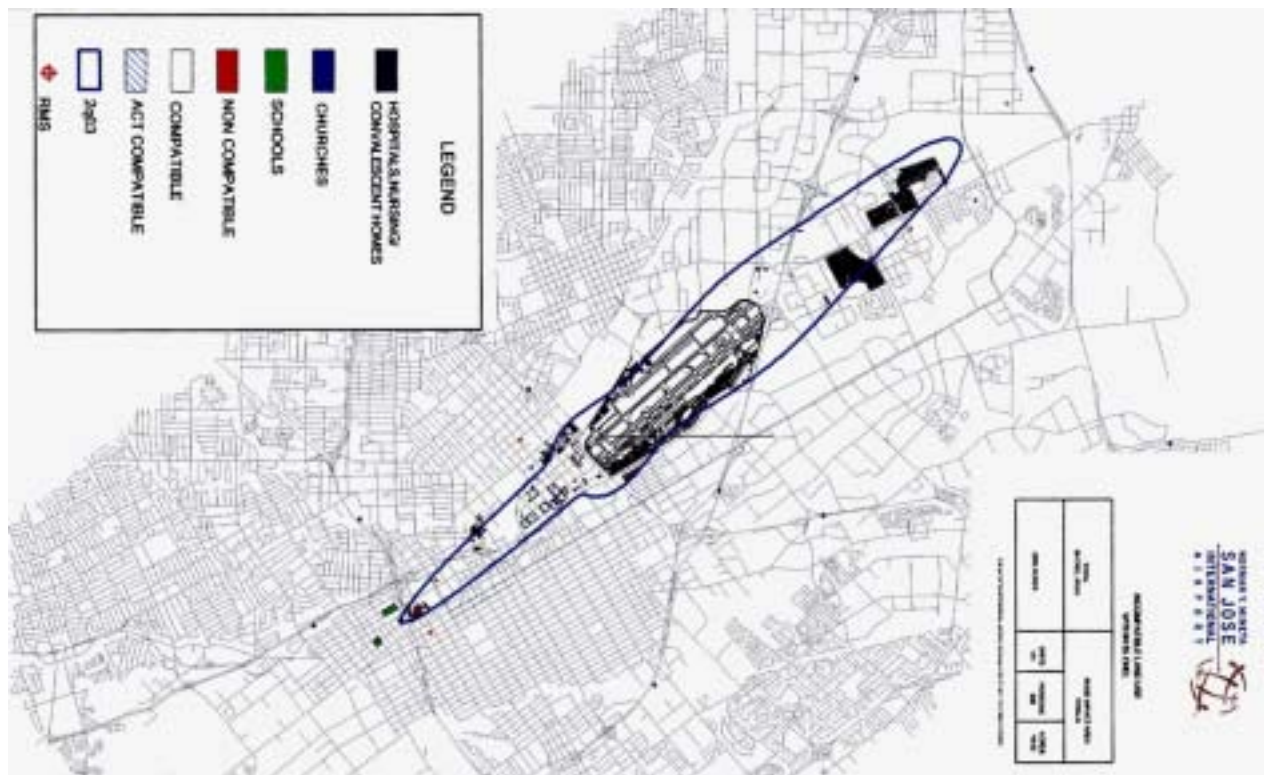
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