The Chimera of "Local Control": Renewed Efforts to Restrict Airport Access

By Jol A. Silversmith

Almost since the beginning of aviation in the United States, tension has existed regarding the extent to which requirements for aeronautical activities may be set by states and municipalities (which are typically the owners and operators of public-use airports), and the extent to which they may only be regulated by the federal government. An early and oft-cited opinion—by Supreme Court Associate Justice Robert Jackson—concluded that "[f]ederal control is intensive, and exclusive. Planes do not wander about in the sky like vagrant clouds."[1] But that ruling did not put an end to the debate about preemption and "local control." The limits of federal oversight over aviation continue to be disputed, in contexts ranging from the operational rules for uncrewed aircraft[2] to consumer protection rules for air carriers.[3]

However, less attention has been devoted to the legal underpinnings of federal control over airports, and the extent to which local control is allowed. This article is intended to provide a brief introduction to the relevant statutes and principles, as well as highlight examples of some of the airports and issues that are currently testing the boundaries of federal oversight.

Generally, recent years have seen an increasing demand for local control of airports, at least in certain communities—an agenda typically driven by a small-but-vocal set of neighbors who are critical of noise, overflights, environmental impacts, and other perceived negative effects of aeronautical activities. Although federal law offers tools with which to defend airport access, they are not all-encompassing—and they assume active enforcement and engagement by the Federal Aviation Administration (FAA), which unfortunately is not always forthcoming.

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FAA Regulation of Airport Access

Unlike for the design and operation of aircraft, relatively few FAA regulations set mandatory standards for airports; despite their importance for aviation, the regulation of airports historically has received less emphasis than that of aircraft and airspace. FAA does set standards for airports that are required to maintain a Part 139 certificate to enable certain commercial operations—of which there are approximately 500 in the United States.[4] But for the thousands of other publicly accessible airports, the standards set forth in FAA advisory circulars and other guidance are just that—advisory guidance, not binding mandates.

However, FAA can obligate airports to comply with agency-imposed standards through other means—most notably, the so-called grant assurances that are statutorily required under the FAA's Airport Improvement Program (AIP), which provides grants to airports.[5] Approximately 3,300 out of the 20,000 airports in the United States are listed in FAA's National Plan of Integrated Airport Systems (NPIAS)[6] and accordingly are eligible to apply for AIP funds to pay for capital maintenance and improvements related to safety, capacity, and noise compatibility. The majority of the airports listed in the NPIAS actually do apply and receive grants on a recurring basis; in a typical year, more than $3 billion is available, with additional funds having been made available during the pandemic.[7]

Some of the commitments are largely uncontroversial—such as to comply with federal civil rights law and other statutes of general applicability.[8] But several are of particular impact because they restrict local decision-making regarding airport access—including No. 22, a prohibition on "unjust economic discrimination" (typically requiring all types of aeronautical activities to be allowed to operate at an airport); No. 23—a prohibition on "exclusive rights" (which prohibits both direct grants of exclusivity to operators at an airport and also "constructive" rights—i.e., in practice, it is the mirror image of No. 22); and No. 5—a prohibition on surrendering an airport sponsor's rights and powers over the airport to another party (such as a tenant or another municipality). What the grant assurances require in practice is not always straightforward. For example, the prohibition on unjust economic

discrimination incorporates an exception for safety—but FAA repeatedly has emphasized that the agency, and not an airport, has the final word as to what activities can be safely conducted.[9]

In 1996, FAA established a specific regulatory procedure for airport tenants and users to submit complaints of noncompliance,[10] which has generated a body of administrative decisions that elaborate upon the grant assurances' requirements. FAA also routinely generates letters to airports and their state/municipal sponsors, setting forth its interpretation of the grant assurances. Relatively few disputes have been elevated to a federal court.[11] The FAA may enforce an airport's grant assurance-based obligations by several methods, but FAA's most effective enforcement tool is the threat or actual withholding of other AIP grants.[12]

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Typically, the obligations associated with AIP grants remain in effect for 20 years and apply to the entire airport, not just to the federally funded project.[13] Some obligations, however, are perpetual. For example, if AIP grants are used to acquire real property, not just that parcel but the entire facility must remain permanently available for airport use.[14] An airport that has ever accepted federal assistance—not limited to AIP grants—must abide by the prohibition on exclusive rights as long as it remains in operation.[15] On the other hand, in certain situations—such as if the grant recipient is privately owned and the funded improvement has a limited useful life—the obligations might have a duration shorter than 20 years.[16] And federal law includes a procedure whereby an airport may request a release from some or all of its obligations, but requests for releases to enable closure or otherwise significantly circumscribe an airport's obligations are rarely granted.[17]

In addition to the grant assurances, the Airport Noise and Capacity Act (ANCA) was adopted by Congress in 1990 for the specific purpose of restraining publicly owned airports from adopting new access restrictions,[18] including but not limited to noise-based restrictions.[19] ANCA operates separately from the AIP assurances,[20] and—in conjunction with its implementing regulations[21]—requires any airport considering limits on jets, helicopters, and certain other aircraft to first perform an analysis of the proposal and submit it to FAA for possible approval. If the restrictions would apply to aircraft with a "Stage 2" noise rating, FAA's affirmative approval of the study is not required—but its approval is required if the regulated aircraft include those with a "Stage 3" rating or above.[22] To date, only three studies have been submitted to FAA. The first, for a Stage 2 restriction, was challenged in court but determined to be justified.[23] The latter two, proposing Stage 3+ restrictions, were each found by FAA to have not fulfilled the applicable statutory and regulatory predicates.[24]

Also highly relevant for airport access—and independent of both the grant assurances and ANCA—is preemption. The courts routinely have recognized that federal law establishes a wide-ranging regulatory regime for aviation and that, as a result, most state or local regulation is not allowed because FAA could or actually does occupy the entire field.[25] Notably, states and municipalities may not restrict how aircraft may operate in airspace.[26] Nevertheless, the exact boundaries of this regime are unresolved,[27] and there is relatively little guidance as to how its limits apply to regulation that is directed specifically at airports—in contrast to aircraft, their operators, or their operations.[28]

Further, the Airline Deregulation Act of 1978 (ADA) codifies some of the elements of preemption—but only to the extent that regulation relates to the prices, routes, or services of air carriers.[29] Additionally, the ADA incorporates an exception to preemption for the exercise of "proprietary powers,"[30] although that exception typically has been interpreted narrowly.[31] As for the overall concept, the precise limits of ADA-based preemption continue to be disputed in various contexts,[32] and again there is relatively little airport-specific jurisprudence.[33]

Other, lesser-known statutes also impose further limits on states and municipalities—and thus on airports. For example, the Anti-Head Tax Act (AHTA) was adopted by Congress in 1973 to constrain the local taxation of air transportation.[34] Although there is a carveout from the statute for landing fees and similar airport charges, they nevertheless must be reasonable.[35] Additionally, the Environmental Protection Agency (EPA)—in coordination with FAA—has exclusive jurisdiction to regulate aircraft emissions, preempting any different state, municipal, or airport standards.[36]

In sum, although FAA's preemptive authority derives from multiple sources—sometimes overlapping and not always coordinated in their construction—such authority nevertheless is wide-ranging and should prohibit most endeavors at local control. But that is not to say that airport sponsors have not tried—and in some cases, they have succeeded.

Recent Assertions of "Local Control"

Examples of airports that have been at the forefront

of recent efforts to impose their own access requirements, circumventing or challenging FAA's oversight, include those discussed below.

Santa Monica Municipal Airport, Santa Monica, California
An airport that could be described as a "poster child" for access disputes is Santa Monica Municipal Airport (SMO)—one of the oldest in the United States and once the home of Douglas Aircraft, but which its municipal parent since the dawn of the jet age has sought to restrict.

A 1984 settlement with FAA resolved then-pending disputes by allowing certain restrictions (notably, a noise limit and a curfew) in return for a commitment to operate the airport until 2015. As the end of the agreement's term approached, new disputes arose, including if the City's AIP grants actually obligated it through 2023[37] and if its surplus property deed—which, atypically, was predicated on leased and not fee-simple property—obligated it in perpetuity.[38]

In 2017, in the last days of the Obama administration, FAA entered into a new settlement with the City, preserving certain obligations at the airport until 2028 while allowing its complete closure by releasing the airport from any obligations after 2028; the agreement also allowed the immediate truncation of the SMO runway (from 4987' to 3500').[39] Stakeholders challenged the settlement, but the cases were dismissed on procedural grounds.[40] Left unresolved is whether FAA actually had the substantive authority to agree to such a settlement—as well as questions for its implementation, such as what, if any, limits the City can impose on the sale of leaded avgas, or if the City can repurpose airport revenue for general purposes when/if it closes the airport.

East Hampton Airport, East Hampton, New York
This airport on Long Island—often depicted as a gateway for the wealthy commuting to second homes—may have always had detractors, but it has become a flash point in recent years as commercial helicopter and seaplane services have made it more accessible, but also more heavily trafficked. Although the Town, which owns the airport, last accepted AIP funds in 2001—and thus was obligated through 2021—an unusual settlement between FAA and third-party litigants provided that certain of its obligations would not be enforced starting in 2015.[41] On that basis, the Town adopted access restrictions, including a noise limit, trip limits, and a curfew.[42] Stakeholders successfully challenged the restrictions, with a federal appeals court ultimately confirming that ANCA was applicable irrespective of East Hampton's grant status, further preempting the restrictions.[43]

Subsequently, after its grant-based obligations had expired, the Town—with the implicit support of at least some regional FAA officials—adopted a new strategy: the Town posited that by closing the airport for 33 hours, it could "extinguish" the statutory obligations that were still applicable and reopen as a "new" airport, at which time it would have local control and could restrict operations—including restrictions similar to those previously adopted and beyond (such as a weight limit and a punitive landing fee schedule for larger aircraft).[44] Stakeholders also challenged these restrictions, and in October 2022 a state court ruled that the Town's restrictions violated ANCA and, further, that the restrictions had not been adopted in conformity with the applicable state environmental requirements.[45] The Town has appealed the decision and also initiated a new environmental study.[46] Unresolved is how/if it will also endeavor to comply with ANCA or if it will attempt other stratagems for restrictions and/or closure.

Heliports, Manhattan, New York
As discussed above, much of the traffic destined for East Hampton departs from the Manhattan heliports, and the helicopter operations at those facilities have historically been the target of public ire, as well as restrictions.[47] In 2022, the state legislature adopted a bill that would have restricted the use of the West 30th Street Heliport, as well as enabled noise-based lawsuits by private individuals against helicopter operations throughout the state.[48] The governor vetoed the bill after a concerted lobbying campaign by industry, citing ANCA, the ADA, and preemption, among other issues.[49] Notably, any restrictions that might have been adopted by New York could not regulate sightseeing flights that originated in and returned to New Jersey.[50]

Reid-Hillview Airport, San Jose, California
Inspired by Santa Monica and East Hampton, the leaders of Santa Clara County, California, decided to cease accepting AIP funds for its primary general aviation airport (RHV), with the intent of closing it after its obligations expire in 2031.[51] In the meantime, the County has banned the sale of avgas at both of its airports, citing alleged health effects on airport neighbors from lead.[52] This ban triggered an informal FAA investigation,[53] but the agency subsequently ended the proceeding and entered into a settlement to enable RHV to serve as a pilot program for the sale of a replacement fuel.[54] However, a complaint filed by stakeholders is ongoing.[55] The endgame is likely to be of national significance; other sponsors are likely to seek to leverage avgas and other environmental issues as a justification for access restrictions.

Naples Municipal Airport, Naples, Florida
Naples Municipal Airport in Florida (APF) has the distinction of being the only airport at which access restrictions successfully were implemented

in conformity with ANCA—although only on older, louder "Stage 2" fixed-wing aircraft (which subsequently were phased out on a national basis),[56] and only after protracted litigation with FAA and stakeholders.[57] In recent years, the City has expressed interest in imposing new limits on operations at the airport, in response to complaints. The airport's counsel has cautioned that doing so likely would be difficult, as well as expensive,[58] but also suggested circumventing FAA and seeking a release from Congress of the applicable grant-based obligations and statutes.[59]

Zamperini Field, Torrance, California

Zamperini Field (TOA) is another airport with an unusual history—which the sponsor is seeking to use to its advantage to restrict operations. Although it is included in the NPIAS and eligible for AIP grants, the airport has not accepted federal funding since 1966.[60] Moreover, although it was transferred to the City as surplus property after World War II, FAA later released it from its federal obligations except for a bare mandate to continue operating as an airport.[61] Nevertheless, the City's discretion to set local requirements is limited, by both preemption and statutes of general applicability. Notably, FAA has warned the City that an ordinance[62] that purports to restrict departure flight paths is unenforceable.[63] Torrance nevertheless is considering whether to enforce the so-called no early left turn rule and adopt other limitations[64]—setting up another conflict with stakeholders, as well as FAA.[65]

Conclusion

The importance of airport access for the future of aviation in the United States cannot be understated. Absent a place for aircraft to take off and land, every other concern of the industry is effectively irrelevant.[66] Yet recent years have seen a surge of efforts to impose restrictions, including new targets (e.g., helicopters) and new stratagems (e.g., emissions). Ironically, these campaigns may serve to impede the introduction of new technologies that could best benefit those who complain. Although still relatively few in number, such efforts must be taken seriously—and responded to comprehensively.

Moreover, although in a few cases municipalities have succeeded in imposing restrictions—and have encouraged other sponsors to explore similar strategies—they typically have involved unique circumstances that are not generalizable to other airports. FAA retains authority that is both clear and broad, which implicitly or explicitly preempts "local control" agendas. But a further question is whether FAA remains willing to exercise that authority. Although the agency no longer formally has the role of promoting aviation,[67] protecting access to airports, and thus maintaining a functional national airspace system, should be a core component of its mandate.

In closing, the issues confronting airports are not new. Writing nearly a century ago, the New York Court of Appeals warned that efforts to restrict airports were shortsighted and counterproductive. Those words are still true today, if not more relevant than ever:

> Aviation is today an established method of transportation. The future, even the near future, will make it still more general. The city that is without the foresight to build the ports for the new traffic may soon be left behind in the race of competition. Chalcedon was called the city of the blind, because its founders rejected the nobler site of Byzantium lying at their feet. The need for vision of the future in the governance of cities has not lessened with the years. The dweller within the gates, even more than the stranger from afar, will pay the price of blindness.[68]

Endnotes

1. Nw. Airlines v. Minnesota, 322 U.S. 292, 303 (1944) (concurring).

2. Jol A. Silversmith, *You Can't Regulate This: State Regulation of the Private Use of Unmanned Aircraft*, 26 Air & Space Law. 1 (Dec. 2013).

3. Jol A. Silversmith, *Federal Preemption over Air Carrier Prices, Routes, and Services: Recent Developments*, 24 Air & Space Law. 4 (Dec. 2011).

4. *Part 139 Airport Certification Status List*, Fed. Aviation Admin. (Apr. 20, 2023), https://www.faa.gov/airports/airport_safety/part139_cert/part_139_airport_certification_status_list. Part 139 certification is usually required for airports that are served either on a scheduled basis using aircraft with more than nine seats or on a charter basis using aircraft with more than 30 seats.

5. 49 U.S.C. § 47104 et seq.

6. *National Plan of Integrated Airport Systems (NPIAS)*, Fed. Aviation Admin. (Dec. 7, 2022), https://www.faa.gov/airports/planning_capacity/npias.

7. *Airport Improvement Program (AIP) 2022–2024 Supplemental Appropriation*, Fed. Aviation Admin. (Jan. 20, 2023), https://www.faa.gov/airports/aip/aip_supplemental_appropriation.

8. *Assurances: Airport Sponsors*, Fed. Aviation Admin. (May 2022), https://www.faa.gov/sites/faa.gov/files/airports/new_england/airport_compliance/assurances-airport-sponsors-2022-05.pdf.

9. Final Agency Decision at 14, Captain Errol Forman v. Palm Beach County, Florida, No. 16-17-13 (Jan. 10, 2021), *aff'd*, Palm Beach County, Florida v. Fed. Aviation Admin., 53 F.4th 1318 (11th Cir. 2022).

10. 14 C.F.R. pt. 16.

11. Courts typically have deferred to FAA's AIP-related decision-making, *Palm Beach County*, 53 F.4th 1318, but on occasion have concluded that it was deficient. City of Naples Airport Auth. v. Fed. Aviation Admin., 409 F.3d 431 (D.C. Cir. 2005).

12. 49 U.S.C. § 47111. FAA also can request an injunction in federal court and, if the misuse of revenue is at issue, pursue civil penalties of up to three times the diverted funds (in addition to reimbursement) as well as request that the U.S. Department of Transportation withhold all federal transportation grants from the airport's sponsor. *Id.* § 46106.

13. Fed. Aviation Admin., Order 5190.6B: Change 2, § 4.3 (Dec. 9, 2022) (re *Airport Compliance Manual*).

14. Additionally, approximately 550 airports were transferred to their sponsors pursuant to the federal Surplus Property Act (now codified at 49 U.S.C. § 47151 et seq.)—many in the aftermath of World War II, but some at later dates. These deeds typically impose restrictions similar to those that now appear in the assurances, but each should be individually reviewed. See, e.g., Id. §§ 3.1, 3.8.

15. 49 U.S.C. § 40103(e).

16. Order 5190.6B, *supra* note 13, § 4.3.

17. 49 U.S.C. § 47107(h); *see, e.g.*, Letter from Brian Armstrong, Manager, L.A. Airports District Office (ADO), to Jim Wood, Mayor, Oceanside, Cal., at 1–2 (Jan. 26, 2007). ("FAA has only rarely granted a sponsor a release from its Federal obligations sufficient to allow for the closure of an airport. . . . A request for airport closure from a sponsor requires a demonstration that closure results in a net benefit to aviation.").

18. *See* 49 U.S.C. § 47524.

19. 14 C.F.R. § 161.5 ("noise or access restrictions" include "a limit, direct or indirect" on aircraft operations).

20. City of Naples Airport Auth. v. Fed. Aviation Admin., 409 F.3d 431, 435 (D.C. Cir. 2005).

21. 14 C.F.R. pt. 161.

22. 49 U.S.C. § 47524(b)–(c). Most jets, helicopters, and certain other aircraft are assigned stage ratings based on their noise emissions, as part of the FAA certification process. 14 C.F.R. pt. 36. Most operations of jets with a Stage 1 or Stage 2 rating are now prohibited in the U.S. 49 U.S.C. §§ 47528, 47534.

23. *Naples*, 409 F.3d at 436. Technically, that case concerned only if the restrictions complied with the assurances, not ANCA. But pursuant to its overall authority—e.g., 49 U.S.C. § 46106—FAA has the authority to allege in court that an airport's Stage 2 restrictions are inconsistent with the procedures or substance of ANCA, even if the agency's affirmative approval of a study performed by that airport is not a predicate to their adoption.

24. Letter from Catherine M. Lang, Assoc. Adm'r for Airports, to Dan Feger, Exec. Dir., Burbank-Glendale-Pasadena Airport Auth. (Oct. 30, 2009); Letter from Benito De Leon, Deputy Assoc. Adm'r for Airports, to Gina Marie Lindsey, Exec. Dir., L.A. World Airports (Nov. 7, 2014).

25. City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 633 (1973) ("It is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to conclude that there is preemption.").

26. Blue Sky Ent., Inc. v. Town of Gardiner, 711 F. Supp. 678, 692 (N.D.N.Y. 1989) ("[F]ederal law in the area of aviation is so pervasive that it preempts a municipal ordinance which attempts to govern the flight paths of aircraft using an airport which has no control tower, is not served by a certified carrier and has no regularly scheduled flights.").

27. Seaplane Adventures, Inc. v. County of Marin, 572 F. Supp. 3d 857 (N.D. Cal. Nov. 5, 2021), *appeal pending* (concluding that local pandemic restrictions on general aviation for sightseeing/leisure purposes were not preempted).

28. *Contrast* Tweed–New Haven Airport Auth. v. Tong, 930 F.3d 65, 74 (2d Cir. 2019) (concluding that state law limiting length of airport runway was preempted because it had a direct impact on air safety).

29. 49 U.S.C. § 41713(b)(1).

30. *Id.* § 41713(b)(3).

31. City & County of San Francisco v. Fed. Aviation Admin., 942 F.2d 1391, 1394 (9th Cir. 1991) ("Congress made it clear . . . that the power delegated to airport proprietors to adopt noise control regulations is limited to regulations that are not unjustly discriminatory.").

32. Bernstein v. Virgin Am., Inc., 990 F.3d 1157 (9th Cir. 2021) (holding that ADA did not preempt state wage and break requirements).

33. *Contrast* Goodspeed Airport, LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n, 681 F. Supp. 2d 182, 207 (D. Conn. 2010) (holding that ADA preemption was applicable to air carrier activities at privately owned airport, although finding specific state statutes at issue not to be preempted).

34. 49 U.S.C. § 40116.

35. Rocky Mountain Airways, Inc. v. Pitkin County, 674 F. Supp. 312, 315 (D. Colo. 1987).

36. 42 U.S.C. §§ 7571, 7573; Control of Air Pollution from Aircraft and Aircraft Engines: Emission Standards and Test Procedures, 70 Fed. Reg. 69,664, 69,667 (Nov. 17, 2005); 14 C.F.R. § 34.3(l).

37. Final Agency Decision, NBAA v. City of Santa Monica, California, No. 16-14-04 (Aug. 15, 2016).

38. City of Santa Monica v. United States, 650 F. App'x 326 (9th Cir. 2016).

39. Santa Monica Settlement Agreement (Aug. 1, 2022), https://www.faa.gov/airports/airport_compliance/santa_monica_settlement.

40. NBAA v. Huerta, 737 F. App'x 1 (D.C. Cir. 2018); NBAA v. Fed. Aviation Admin., 496 F. Supp. 3d 102 (D.D.C. 2020).

41. Comm. to Stop Airport Expansion v. Fed. Aviation Admin., No. 03-CV-2634 (E.D.N.Y. Apr. 29, 2005).

42. East Hampton Town Code § 75.38.

43. Friends of the E. Hampton Airport, Inc. v. Town of East Hampton, 841 F.3d 133 (2016). Despite the significance of the issues, FAA did not participate in the case. Unfortunately, FAA often has declined to opine on matters that are within its jurisdiction and of significant import to airports. Seaplane Adventures, Inc. v. County of Marin, 572 F. Supp. 3d 857, 860 (N.D. Cal. 2021), *appeal* pending ("An order requested that the FAA weigh in on the preemption question. . . . [T]he agency declined to do so.").

44. East Hampton Town Resolution No. 2022-190 (Jan. 20, 2022); East Hampton Town Resolution No. 2022-342 (Mar. 3, 2022).

45. E. End Hangars, Inc. v. Town of East Hampton, No. 602799/2022; Coalition to Keep E. Hampton Airport Open Ltd. v. Town of East Hampton, No. 602801/2022; Blade Air Mobility, Inc. v. Town of East Hampton, No. 602802/2022, slip op. (Suffolk Cnty. Oct. 19, 2022).

46. East Hampton Town Resolution No. 2022-1492 (Dec. 15, 2022).

47. Nat'l Helicopter Corp. of Am. v. City of New York, 137 F.3d 81 (2d Cir. 1998).

48. N.Y. S. No. 7493-A (2022).

49. N.Y. Governor Veto No. 107 (Dec. 15, 2022) ("Regulation of aircraft and airspace is primarily a federal responsibility, and federal law significantly constrains the State's ability to legislate in this area. Recent federal case law makes clear that non-federal actors must carefully consider how state and local restrictions interact with federal laws governing aviation and must be attentive to federally mandated processes for enacting policy in this area. Certain elements of this legislation run counter to the federal scheme regulating New York's airports and airspace.").

50. New Jersey—and at least one of its municipalities—also has proposed legislation that is at odds with federal law: N.J. S. 478 (2020) and N.J. S. 479 (2020). Mark Koosau, *Ordinance to Ban Helicopters from Hoboken Pulled from Council Agenda; FAA Says It Rules the Sky*, Hudson: NJ.com (Jan. 3, 2023), https://www.nj.com/hudson/2023/01/ordinance-to-ban-helicopters-from-hoboken-pulled-from-council-agenda-faa-says-it-rules-the-sky.html. Further bills also have been introduced in New York State (S. 6109 (2023)) and New York City (Int. 226-2022; Int. 551-2022).

51. However, the County—when it contemplated a similar strategy nearly 30 years ago—conceded that closing the airport also would require compliance with the California Environmental Quality Act. Draft Environmental Impact Report: Reid-Hillview Airport Closure Project (Mar. 1996).

52. Cnty. of Santa Clara, Cal., Direct Administration and County Counsel to Take All Necessary Actions, Including Closure, to Immediately Prevent Lead Contamination from Operations at Reid-Hillview Airport (Aug. 17, 2021) (Report No. 107018), http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=13226&MediaPosition=&ID=107018&CssClass=.

53. Letter from Mark McClardy, Dir., Airports Div., Fed. Aviation Admin. W.-Pac. Region, to Eric Peterson (Dec. 22, 2021).

54. Memorandum of Understanding Between the Federal Aviation Administration and the County of Santa Clara Regarding Part 13 Investigation (Feb. 8, 2023).

55. Aircraft Owners & Pilots Ass'n (AOPA) v. Santa Clara County, California, No. 16-22-08.

56. Pub. L. No. 112-95, § 506.

57. City of Naples Airport Auth. v. Fed. Aviation Admin., 409 F.3d 431 (D.C. Cir. 2005).

58. Memorandum from Peter J. Kirsch, Kaplan Kirsch & Rockwell LLP, to Chris Rozansky, City of Naples Airport Auth., on Airport Noise Restrictions (Mar. 26, 2021), https://www.flynaples.com/wp-content/uploads/5A-Peter-Kirsch-Memorandum-re-regulatory-oversight-of-use-restrictions.pdf.

59. Peter J. Kirsch, Understanding Airport Noise Restrictions (Sept. 12, 2022), https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1538486/Presentation_for_City-Authority_Joint_Meeting_9-12-22_ZB_CR_DC.pdf. At least two airport sponsors previously have obtained congressional authority to impose unique local controls: Stage 2 restrictions at Jackson Hole, Wyoming (Pub. L. No. 108-176, § 825); and weight limits at Teterboro, New Jersey (Pub. L. No. 108-199, Division F, § 106). At least three sponsors also have bypassed FAA to obtain early permission to close their airports: Rialto, California (Pub. L. No. 109-59, § 4408); St. Clair, Missouri (Pub. L. No. 113-285); and St. Marys, Georgia (Pub. L. No. 114-328, § 2829D).

60. Letter from Mark McClardy, Manager, Airports Div., Fed. Aviation Admin. W.-Pac. Region, to James H. Gates (Apr. 7, 2004).

61. *Id.*

62. Torrance City Code § 51.2.3(e).

63. Letter from Sara Mikolop, Acting Assistant Chief Counsel for Reguls., Fed. Aviation Admin., to Lori D. Ballance (Dec. 16, 2022).

64. Document to Transp. Comm., Torrance, Cal.: Consideration of Draft Voluntary Letter of Agreement Between Flight Schools and FAA, Landing Fees (Apr. 12, 2023), https://www.torranceca.gov/home/showpublisheddocument/81336/638163995125222184.

65. Even though FAA may have no direct financial leverage over TOA, it does have the authority to go to court to seek an injunction. United States v. City of Santa Monica, 330 F. App'x 124 (9th Cir. 2009).

66. Generally, decisions regarding the situs of airports are a matter of local zoning law and not within the jurisdiction of FAA. Gustafson v. City of Lake Angelus, 76 F.3d 778, 785 (6th Cir. 1996). This is another issue likely to be of growing importance for the industry going forward, especially for advanced air mobility (AAM) operators.

67. Pub. L. No. 104-264, *modifying* 49 U.S.C. § 40101.

68. Hesse v. Rath, 249 N.Y. 436, 438 (1928).