US Department
of Transportation
Federal Aviation Administration
800 Independence Ave. SW
Washington. DC 20591

August 21, 1992

Mr. J. Dennis Crabb
City Attorney
for the City of South Lake Tahoe
1052 Tata Lane
South Lake Tahoe, California 96150-6324

Dear Mr. Crabb:

This letter responds to a request for an interpretation of the applicability of the Airport Noise and Capacity Act of 1990(1990 Act) to actions contemplated by the City of South Lake Tahoe as the owner and operator of the Tahoe Valley Airport. This letter also fulfills a commitment to the u.S. District Court for the Eastern District of California, in the case of city of South Lake Tahoe v. TRPA (Civ.No. S-84-819), to comment on draft documents submitted to the Federal Aviation Administration (FAA) to ensure compliance with the 1990 Act and the implementing regulations in Part 161 (14 CFR Part 161).

The City of South Lake Tahoe, the Tahoe Regional Planning Agency, the League to Save Lake Tahoe, and the Attorney General for the State of California developed the draft documents to address longstanding disputes over the operation of the Tahoe Valley Airport. We understand the parties are in the process of executing a settlement agreement and related documents to resolve the pending litigation.

We have reviewed the draft documents submitted by the City of South Lake Tahoe, which include a draft settlement agreement and airport master plan, and airline access plan and airport regulation. We also have carefully considered the representations made by the parties regarding the status and relationship of airport noise or access restrictions now in place and restrictions proposed in the draft documents to regulate operations at the Tahoe Valley Airport. Based on our review and the parties' representations, we have concluded that many of the noise or access restrictions in the proposed draft documents are not subject to the requirements of the 1990 Act and Part 161. A specific statutory exemption, in §§2153(a)(2) (C) (v) (I) and (II) of the 1990 Act, excludes certain proposed restrictions from the statutory and regulatory requirements that would otherwise apply. An analysis of our conclusion is attached to this letter.

The FAA does not address here its environmental responsibilities under the National Environmental Policy Act of 1969 with respect to Federal actions that may be required as the City implements the measures in the settlement agreement and airport master plan. We also do not address the FAA's compliance and enforcement responsibilities under the Airport and Airway Improvement Act of 1982 and related grant agreements, or the agency's safety responsibilities under the Federal Aviation Act of 1958. Finally, this letter does not address issues reserved to the Department of Transportation regarding economic regulation of any air carrier operating under the authority of title IV of the Federal Aviation Act of 1958. The Department of Transportation and the FAA reserve the right to investigate complaints, ensure compliance, and enforce obligations imposed under these statutes.

Sincerely,

Kenneth P. Quinn
Chief Counsel

Attachment

cc: Kenneth R. Williams, State of California

Susan Scholley, Tahoe Regional Planning Agency
Richard M. Sherman, Jr., AirCal, Inc.
Richard A. Malahowski, American Airlines, Inc.
E. Clement Shute, League to Save Lake Tahoe
Michael S. Gatzke

TAHOE VALLEY AIRPORT

ISSUE: Applicability of the Airport Noise and Capacity Act of 1990 (1990 Act) (49 U.S.C.App. §2151-§2158) and theimplementing regulations of Part 161 (14 CFR Part 161) to actions contemplated by the City of South Lake Tahoe as the owner and operator of the Tahoe Valley Airport. The Federal Aviation Administration (FAA) has agreed to comment on draft documents submitted by the City of South Lake Tahoe to ensure compliance with the 1990 Act and Part 161.

BACKGROUND: The City of South Lake Tahoe (the City), the Tahoe Regional Planning Agency (TRPA), the League to Save Lake Tahoe (League), and the Attorney General for the State of California (California) have been involved in longstanding disputes regarding the operation of the Tahoe Valley Airport. During a stay in litigation pending in the U.S. District Court for the Eastern District of California (City of South Lake Tahoe v. TRPA, civ.No. S-84-819), the parties developed draft documents, including a draft settlement agreement and airport master plan, and airline access plan and airport regulation. (The United States is plaintiff-intervenor in the litigation, but was not an active participant in the consensus process that led to the draft documents. The League is not now a party to the litigation, but would be permitted to intervene by stipulation for purposes of settlement and entry of final judgment.) The non-Federal parties are in the process of executing the settlement agreement to resolve the pending Federal litigation and related state court litigation.

CONCLUSION: Many of the noise or access restrictions in the proposed draft documents are not subject to the requirements of the 1990 Act and Part 161 that would otherwise apply pursuant to a specific statutory exemption in §§2153(a) (2) (C) (v) (I) and (II) of the 1990 Act. This conclusion is based on review of the draft settlement agreement and airport master plan, and the airline access plan and airport regulation, and the parties' representations of the status and relationship of existing and proposed restrictions. The City may impose restrictions pursuant to the settlement agreement and airport master plan approved by the court that had been adopted by the City of South Lake Tahoe on or before October 1, 1990, and that had been stayed as of October 1, 1990, by a court order or as a result of litigation. The City may replace any restriction completely or partially disallowed by the court with a new restriction if such new restriction would not prohibit aircraft operations in effect or permitted as of November 5, 1990.

Attachment to letter dated August 21, 1992, to the City Attorney for the City of South Lake Tahoe

ANALYSIS: The 1990 Act and Part 161 apply generally to noise and access restrictions on the operations of stage 2 and stage 3 aircraft. Thus, in the ordinary case, the 1990 Act and Part 161 would apply to the noise or access restrictions contained and proposed in the draft documents. The City would be required to comply with the statutory requirements of the 1990 Act and regulatory procedures for notice, analysis, and Federal approval in certain cases before imposing noise or access restrictions at the Tahoe Valley Airport. However, the 1990 Act contains narrow and specific exemptions that limit application of the procedural and substantive requirements in the statute. Specifically, §§2153(a) (2) (C) (v) (I) and (II) provide an exemption where noise or access restrictions have been suspended as the result of litigation. Sections 161.7(b) (5) and (6) of the implementing regulations repeat the statutory exemption. In pertinent part, the exemption limits the applicability of the 1990 Act where:

> [A] restriction which was adopted by an airport operator on or before October 1, 1990, and which was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction or a part thereof is subsequently allowed by a court to take effect; and ...in any case in which [such] a restriction ...is either partially or totally...disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of November 5, 1990.

After review of the material submitted by the City of South Lake Tahoe, the FAA concludes that many of the noise or access restrictions in the proposed draft documents are exempt under this provision from the statutory and regulatory requirements of the 1990 Act and Part 161 that would otherwise apply. The court's approval of the settlement agreement and related documents will allow certain operating restrictions to take effect that had been stayed by court order or as a result of the pending litigation. And, certain new restrictions may be imposed by the City, consistent with the settlement agreement and

airport master plan, to replace restrictions that were disallowed either completely or partially during the pending litigation.

Since 1983, the City has regulated airport operations by ordinance, airport order, and lease agreement. Nearly every aspect of airport operations has been regulated through these means, including the hours of operation, the number of flights, the number of passengers, the allocation of seats, the type of aircraft, and the amount of noise. Litigation beginning in 1984 in U. S. District Court by the City and various other parties challenged decisions to change air carrier service at Tahoe Valley Airport. In 1987, the City approved a regulation required by an interim service agreement, negotiated by the parties and confirmed by the court, that regulated service at the airport and imposed noise mitigation measures. The City, TRPA, the League, and California then entered into an airport consensus process, and agreed to complete an airport master plan to resolve disputed issues. In 1988, the court stayed further proceedings in the litigation to allow the parties to develop the settlement agreement and airport master plan and related documents reviewed here. The comprehensive plan set forth in the draft documents is intended to avoid further litigation, ensure orderly development of the Tahoe Valley Airport as part of the national aviation system, and protect the Tahoe Basin. The plan and the restrictions proposed in the settlement agreement will govern airport operations and development for the next 20 years. The parties have represented, orally and in writing, that noise or access restrictions proposed in the draft documents are successors to numerous other regulatory actions taken by the City, both on its own initiative and in response to regulatory action and requirements of TRPA pursuant to its authority. The comprehensive regulatory scheme outlined in the draft documents is not significantly different from the various restrictions previously implemented by the City. In most cases, the proposals relax current airport operating restrictions, or clarify restrictions adopted by the City since acquiring the airport in 1983. Some proposals will continue previous restrictions and affirm limits in place before enactment of the 1990 Act. other proposals will replace restrictions that were stayed during the litigation or revised to ensure consistency with environmental thresholds and permits issued by TRPA.

While many actions that may be taken by the City pursuant to the draft documents are not subject to the 1990 Act or Part 161, there are some limits to the statutory exemption. To ensure continued compliance with the 1990 Act and Part 161, the City must show and ensure that airport restrictions adopted to implement the settlement agreement and airport master plan meet the criteria of the exemption. Particularly, the City may not adopt restrictions that prohibit airport operations in effect as of November 5, 1990. 49 U.S.C.App. §2153(a) (2) (C) (v) (II). Restrictions that do not reinstate a " previous restriction or limitation, replace a disallowed restriction, or that impose restrictions or reduce aircraft operations below those permitted on November 5, 1990 would not be covered by the statutory exemption. The City would be required to comply with the 1990 Act and Part 161 before imposing any non-exempt restriction. For example, a restriction that discontinued all commercial flights or reduced flights below levels permitted on November 5, 1990 would be subject to the requirements of the 1990 Act and the procedures of Part 161. While there may have been no commercial service at the Tahoe Valley Airport on November 5, 1990, the lack of service did not result from restrictions prohibiting those operations, but only from the commercial decisions of air carriers not to continue or institute service. Because a certain number of aircraft operations were permitted before November 5, 1990, the City may not impose a more severe restriction without complying with the 1990 Act and Part 161. Similarly, a restriction prohibiting air carrier and commuter flights between certain hours and during certain times of the year had not been imposed by the City before enactment of the 1990 Act, and would be subject to the 1990 Act and Part 161. These are merely examples of restrictions that would not be exempt or grandfathered under the 1990 Act.

While the City of South Lake Tahoe owns and operates Tahoe Valley Airport, we are aware of the unique role that the court has defined for TRPA in the Tahoe Basin. TRPA's authority to set environmental standards and issue permits may have an effect on access and operations at the Tahoe Valley Airport. city of South Lake Tahoe v. TRPA, 664 F.Supp. 1375, 1377-1378 (E.D.Cal. 1987). Nevertheless, the fact that TRPA environmental thresholds may form the basis of actions taken by the City to implement those thresholds does not remove those actions from the scope of the 1990 Act and Part 161. Because the City implements airport restrictions as the airport owner and operator, the City is subject to the 1990 Act and Part 161. Regardless of TRPA's input and role, the City would be required to comply with the 1990 Act and Part 161 before imposing airport noise or access restrictions. However, as a result of express statutory exemptions in the 1990 Act, certain actions by the City that otherwise would be subject to the 1990 Act and Part 161 are specifically excluded. The FAA is concerned about the interpretation of §161.101(d) as it is presented in the settlement agreement and airport master plan. Settlement agreement and airport master plan, §2.a.i.(2) (c) (p.11), §3.b.iv. (p.13), and mitigation measure 3.10 (p.54). The settlement agreement and airport master plan would require notice in operating leases of potential mitigation measures that could include reductions or discontinuance of flights otherwise permitted by the lease. Simply including the restrictions in operating leases does not remove such restrictions from FAA review or insulate restrictions from the statutory and regulatory requirements. The definition of "noise or access restriction" expressly includes provisions in leases that affect the operations of Stage 2 or Stage 3 aircraft. 14 CFR section 161.5. Both the 1990 Act and Part 161 would permit the City and individual aircraft operators to enter into separate, voluntary agreements that would restrict aircraft operations at the Tahoe Valley Airport. Part 161, Subpart B. In order to impose such restrictions, the City would be required to follow the procedures in Subpart B (agreements), Subpart C (Stage 2 restrictions), or Subpart D (Stage 3 restrictions) of Part 161, or negotiate individual agreements that would bind only the aircraft operators that have entered into such agreement with the City.