

# Assessment of Jacobs LGB FIS Feasibility Study

Bob Joy (11/27/16)

The primary downside of a Federal Inspection Station (FIS) facility at LGB is that it opens the door to a large and lucrative international market that is not likely to be adequately served by the remaining flight slots available within the 50 flight maximum dictated by our noise ordinance. The FAA supports our noise ordinance as long as it “- - - is reasonable, non arbitrary, and nondiscriminatory” and “- - - does not create an unreasonable burden on interstate or foreign commerce”. If Jet Blue or a competitor desires flight slots over our current limit of 50 they can challenge our noise ordinance in court and, based on our out of court settlement of a previous successful challenge by American Airlines, are likely to win. A successful challenge to our Ordinance would result in a new, higher flight slot limit and forced neighborhood sound mitigation to stay within our 65 CNEL noise maximum. The FAA has confirmed that our Ordinance is vulnerable to legal challenge from any air carrier that “- - - believes that the ordinance is a barrier to entry - - -” in three separate letters to our City Attorney the latest dated October 18, 2016.

During the July 7, 2015 vote to approve this FIS Feasibility Study the City Council also approved a requirement, requested by council member Al Austin, that the Study include “-- a risk assessment of **potential threats to the airport noise** control ordinance, and a plan to mitigate impacted neighborhoods and schools from environmental and health impacts should the airport noise control ordinance become invalidated;” After approval of this wording the requirement was re-assigned to the City Attorney’s Office and then re-worded in the RFQ to eliminate the obligation to provide either a risk assessment or a mitigation plan. The City Attorney’s report, submitted with the Jacobs FIS Feasibility Study, in Discussion section 3, dismissed the possibility of a legal challenge to the Ordinance stating that there are “- - **no facts to support this scenario**”. This statement is not true as it ignores the fact that American Airlines and Alaska Airlines threatened to sue the city of Long Beach in 2002 based on the unfair commercial advantage of Jet Blue controlling all available flight slots. The city preserved the ordinance only by convincing Jet Blue to give up some of its’ slots to American and settle out of court. That is exactly the kind of fact that illustrates how vulnerable our noise ordinance is to a commerce based legal challenge.

As a result of it’s elimination in the RFQ this study **does not include any assessment of risk to our Noise Ordinance from a legal challenge by international carriers blocked from expanding their business at LGB once a FIS is established**. Instead the Report references a Market Analysis forecast on page 11 stating that demand for international flights will grow to 8 flights per day over the next 4 years then inexplicably level off at that number indefinitely. This statement has provided positive assurance to everyone who has looked to this report for clarification of any potential threat to our Noise Ordinance from an FIS. Unfortunately the statement is deliberately misleading and ignores the fact that at multiple places in the report the Market Analysis actually provides verification that the FIS will make possible a **significant and continuing upward pressure in demand for international flights at LGB**.

The reason the Market Analysis forecast is misleading is explained only if you take time to find three statements buried in Appendices A and C. The second of those statements ends with this sentence “- - **no increase in total flight activities beyond the current noise budget are used to estimate international flights.**” This is an admission that the Market Analysis forecast is not a forecast at all but instead just a deceptive way to tell us that our Noise Ordinance should block all the demand for additional international flights at LGB that might exceed our noise limit. It should be no surprise that the Report, even though it repeatedly refers to the existence of additional demand, does not tell us the size

of that demand. Telling us there will be no need for more than 8 international flights is a deliberately misleading strategy to reassure us that there will be no potential risk to our ordinance from the opening of our airport to international traffic when in fact the Report confirms that there is. Statements contradicting the Report's "forecast" of lack of demand for more than 8 international flights are listed sequentially below in the order they appear in the report. Underlined portions are my emphasis.

#### **Section 1.4 Probable Destinations (page 10)**

The second paragraph in this section states "The Market Analysis included a network evaluation of current commercial carriers serving LGB, select carriers not currently active at LGB, and international carriers that may look to LGB as a gateway." The following additional sentence is included near the end of the paragraph "Based on LGB's competitive position in Southern California, observed historic demand, and econometric indicators, it is reasonable to assume continued international growth in the Southern California market." These statements directly contradict the assertion made in Section 1.5, quoted below, that LGB international flights are likely to grow at 11% per year then stop growing after 4 years.

#### **Section 1.5 Forecast - International Market Demand at LGB (page 11)**

The paragraph below Table 4 on this page begins with this sentence "The Market Analysis has forecasted a startup of six international routes the first year after initiating international service, increasing to eight routes by the fourth year." The paragraph ends with this sentence "The Market Analysis estimates a steady state of eight international routes in Years Five and beyond." This statement is made, in spite of the assertion quoted above from page 10, that we should "- - assume continued international growth in the Southern California market." The reference to a "steady state of 8 international routes" is deliberately misleading because it fails point out that the authors of the Market Analysis are artificially limiting their "Forecast" data to the flight slot limits of our Noise Ordinance. Although they later admit this in Appendices A and C the damage is done since most readers will not bother to read the appendices of such a detailed report.

#### **Section 2.5 Noise (page 18)**

The first paragraph of this section states "The potential FIS Facility would not change the number of flights at LGB. What would change is the destination of a portion of the flights." This means that Jet Blue will have to give up domestic business that has grown approximately 22% this year in order to make slots available for international flights that are also growing. It is unreasonable to assume that this would not substantially increase pressure to challenge our noise ordinance especially if additional domestic flights could provide commuter connections for the international travelers.

#### **Section 4.2 Port Of Entry / User Fee Airport Designation (page 25)**

The first paragraph of this section refers to Point Of Entry (POE) designation which comes with Federal funding support if it's justified by enough foreign traffic volume. The sentence in question is "When service and passenger volumes meet qualifying levels of POE designation, then LGB may apply for POE designation." This statement directly contradicts the overall theme of the report, which is that International traffic is not going to grow enough to test the 50 flight slot limit or our noise ordinance which isn't large enough to qualify for POE.

#### **Appendix A Market Analysis Traffic Analysis - Projection of Future Flight Activities (page 17)**

The first sentence of this section states "Given the slot regime at LGB, the development of an FIS facilities forecast is not just based on traffic levels, local demographics or air service area characteristics but the slot limitations." The third paragraph begins "As stated above, no increase in total flight

activities beyond the current noise budget are used to estimate international flights.” The second paragraph on page 17 of **Appendix C** states “The international forecast was constrained to estimate potential markets within the 50 commercial slots available.” These statements are the admission by the authors of this report that in spite of contrary evidence in their own forecast they deliberately do not acknowledge the existence of any future demand for International flights at LGB beyond 8 that they assume Jet Blue will accommodate by displacing 8 domestic flights. Positioning these explanations in the appendices of this report and not at the beginning in the main body has already badly misled the public and the press. People reading just the main body of the Jacobs Report think it is stating that there will be no significant increase in demand for international flights beyond what our Noise Ordinance can currently accommodate. This is a deliberate deception that exposes the City Council to accusations that the Council failed to seek clarification of this issue, knowingly misled the public and exposed our ordinance to an avoidable legal challenge.

#### **Appendix A Market Analysis Traffic Analysis - Projection of Future Flight Activities** (page 17)

The next to last paragraph of this section states at it’s end “No date has been determined for the potential opening of an FIS facility therefore the international forecast assumes slot usage of domestic flight operations at historical averages.” In this case the referenced historical averages are taken from a chart in the Past and Current Flight Activities section in this same appendix which shows a steep decline in slot usage to 74% stating on page 17 in the Projection of Future Flight Activities section that “In the most current month, July 2016, usage was also 74%”. This fails to point out that 9 new slots had been added in 2016 skewing the average slot usage for that period. If new slots had not been added then July 2016 slot usage would be 90% and in fact usage is now 100% even with the 9 new slots, a 22% increase in flights in the first 10 months of 2016. The truth is that all our 50 flight slots are currently in use and we are now at or near the top end of our allowable noise limit. In spite of this dramatic late increase in domestic flights the study insists on predicting that future slot demand for international flights will be very gradual and level off to stay within our 50 slot maximum indefinitely (which can only happen if Jet Blue gives up an equal number of domestic flights). With all our flight slots used up with domestic flights it should be obvious that opening up the airport to an additional and entirely new market will put our noise ordinance at serious risk of challenge from any competitor who wants a part of that market and doesn't have access to it from centrally located Long Beach.

#### **Appendix A Market Analysis Traffic Analysis - Potential International Destinations Analysis** (page 21)

The first paragraph of this section reads as follows “Using traffic analysis of international demand (US DOT) for the Los Angeles area as a baseline, the growth rate for the last three years has been 12%. JetBlue pricing and capacity has stimulated passenger growth between 12% and 125% in other international markets they have entered.” This last sentence completely undermines any pretense that this report offers assurance that a FIS facility would not ultimately encourage a challenge to our noise ordinance on grounds that it restricts commerce. In this case, the restriction would initially be on JetBlue who would not be allowed any overall growth because there are no additional flights slots available. The possibility of slightly greater profits from international flights substituted for an equal and fixed number of existing domestic flights is a very weak justification for financing and maintaining a FIS facility. No competitive business would be expected to agree to a long-term commitment that severely limited their growth in a new market, expanding at nearly twice the rate of their current market (11% vs 6.5%), unless they anticipated a way to eventually bypass that commitment. It would be very naïve of us to assume that Jet Blue wouldn't encourage a challenge to the noise ordinance, even from a competitor, once an FIS was established.

**Appendix A Market Analysis Traffic Analysis - LGB Flight Activity Evaluation (page 21)**

The second paragraph of this section reads as follows “Based on LGB’s competitive position in Southern California, as well as observed historic demand and econometric indicators, it is reasonable to assume continued international growth to the LA Basin and that a FIS Facility at LGB would command fair share of the markets offered within the slot constraints.” The critical phrase here is “within slot constraints” implying that their forecast predicts a market for more flights than our constraints allow. This is an acknowledgment that the international flight market surrounding LGB would provide a continuing demand for additional flight slots in excess of what is currently allowed.

**Appendix C. The Economic Impact of Long Beach Airport (Federal Inspection Service Facility) - The Business of LGB - Commercial Aviation (page 17)**

The second paragraph of this section contains this sentence “While the number of flights at LGB is restricted, the Market Analysis identified pent up demand for many international markets to LGB.” This is an explicit admission that our noise ordinance would block demand for more international flight slots from Jet Blue or it’s competitors once a FIS is in place. This statement is made in spite of an attempt to convince the reader that the opposite is true by including quotes in Section 1.1 Air Carrier Interviews (page 7), from three international air carriers that they have no desire to expand their business to LGB because they are satisfied with their positions at LAX.

**Appendix C. The Economic Impact of Long Beach Airport (Federal Inspection Service Facility) - The Business of LGB - Commercial Aviation (page 17)**

The second paragraph of this section also contains this sentence “The international forecast was constrained to estimate potential markets within the 50 commercial slots available.” This is an admission that data derived by Jacobs to forecast international flight demand was altered to make it appear that demand will never grow to the point that would justify increasing the 50 flight slots at LGB.

This analysis of the Jacobs LGB FIS Feasibility Study asserts that the public is being deliberately misled on the issue of risk to the LGB Noise Ordinance. A city council whose members have sworn repeatedly to protect our noise ordinance should be restrained from approving a FIS facility at LGB. Based on the Council’s own commissioned research a FIS will ultimately provide an almost certain opportunity for airlines to mount a court challenge to the our Noise Ordinance based on restriction of competitive access to growing new markets.

It is imperative that the City Council require the Jacobs Engineering Group to issue a public statement that clarifies the contradictory statements in their report. Specifically they should state that they were or were not instructed to insure that their Market Analysis would project demand for international flights from LGB low enough to always be adequately accommodated within the limits of our Noise Ordinance.

This issue needs to be examined in a City Council Study Session to review the Jacobs Report. A vote on the LGB FIS needs to be delayed until the issue is resolved, **otherwise the City is exposing itself to a legal challenge to the validity of statements made in the Forecast section of the Jacobs LGB FIS Feasibility Study.**

**Additional items that verify the vulnerability of our Noise Ordinance to a challenge from Jet Blue competitors.**

- On October 18, 2016 the Deputy Chief Council of the FAA responded to a letter sent to them by our City Attorney asking about the possibility that approving the implementation of a FIS facility at LGB would change the status of our Noise Ordinance in the eyes of the FAA. The FAA's answer was that it would not but in their response the FAA Chief Council also stated the following "As stated in both the 2003 and 2015 letters, if at some point in the future a potential new entrant carrier believes that the ordinance is a barrier to entry, that carrier would be free to challenge it by filing a complaint with the FAA under 14 C.F.R. part 16." "The FAA reserves the right to review such a complaint and the consistency of the noise ordinance with Federal law." In spite of these three warnings from the FAA our City Attorney, in his report on FIS feasibility, insists that a FIS facility does not increase the possibility of a successful legal challenge to our Noise Ordinance.
- Our Noise Ordinance dictates weight limits on commuter aircraft that currently make that category of business unprofitable for airlines at LGB. The possibility of offering domestic commuter flight connections to international flights must substantially increase the incentive for international carriers to challenge the Ordinance if they can prove it also blocks the profitability of current and potential commuter flights.