

New Orleans International Airport

Governance, Regional Cooperation and Airport Expansion

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June 1999

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PREFACE

The purpose of this study is to identify steps that can be taken to facilitate regional cooperation with respect to the growth of New Orleans International Airport (NOIA or the Airport). The Airport, which occupies approximately 1,600 acres, has one of the smallest land masses of any major airport. Owned by the City of New Orleans (City), it is located primarily in the City of Kenner, Jefferson Parish, with a portion of one runway extending into neighboring St. Charles Parish. The airport's expansion plans call for the construction of an additional runway in St. Charles Parish.

BGR has identified two serious challenges to the airport's future growth and expansion. One challenge is the increasingly aggressive opposition of local government bodies and citizens near the airport to airfield expansion. The other problem is the lack of strong, broad-based support for the Airport and its management. In response to these problems, BGR is recommending a number of actions, including the transfer of authority over the Airport to a regional authority and the commencement of direct negotiations between the City of New Orleans, the City of Kenner, and St. Charles Parish.

Local Government Opposition

While airports play a vital economic role in the regions that they serve, they also generate serious environmental problems for the neighboring communities. Where the airport is located within the jurisdiction of the government that owns it and has authority over it (airport proprietor), that government can mitigate environmental impacts and protect future airport growth opportunities through land use, zoning, and similar controls. When necessary, such

governments can obtain land for airport development by exercising the power of eminent domain.

The situation becomes more difficult when the airport proprietor is not the governing body for the jurisdiction in which the airport is located (host community). In such cases, the airport proprietor usually lacks the ability to impose land use and development controls in the airport environs or to acquire property for the airport by exercising the power of eminent domain. The host community, which normally has control of land use and zoning, has little incentive to protect the airport's future growth.

BGR found that with few exceptions, airports that want to expand onto land outside the airport proprietor's jurisdiction must reach accommodation with the local government having jurisdiction over that land. There are two situations in which expansion is possible without local government consent: (1) where state law grants the airport powers that supersede the host community's traditional land use powers, and (2) where the host community has ceded traditional land use powers through an intergovernmental agreement.

Neither of these exceptions applies to the existing situation of NOIA. Nor does changing the law to reallocate land use and zoning powers appear to be a realistic option. Any such reallocation—whether to the City of New Orleans, the State of Louisiana or a regional authority—would raise serious constitutional issues and could require an amendment to the State Constitution. Given the constitutional issues, BGR believes that the conflict over airport expansion should be resolved through direct, good faith negotiations between the airport's proprietor, the City of Kenner, and St. Charles Parish.

Regional Unity

A separate, but related, issue affecting the airport's development is the lack of strong broad-based support for the Airport.

Important growth issues—such as increasing the limited number of flights into New Orleans, obtaining state and federal funding, and maintaining NOIA's position as the premier airport in the Gulf Region—can be resolved only through concerted effort by businesses and governments in the region.

Among the obstacles to forging a broad-based, public-private alliance to promote the Airport is the fact that the Airport does not enjoy the confidence of many in the business community and government circles. Criticisms leveled at the Airport by the public include allegations of gross mismanagement and patronage.

Replacing the historic image of the Airport as a mismanaged institution operated for the benefit of New Orleans' politicians with the concept of a well-run economic engine operated for the benefit of the region as a whole is critical to gaining support for the Airport. BGR believes that there are two ways to accomplish this. One involves transferring control of the airport to a different entity; the other involves the City's taking serious, meaningful steps to investigate, disclose and, where necessary, change its practices.

After considering the alternatives and other aspects of regional cooperation, BGR is advocating the transfer of control of the airport to a regional authority. While transferring control might seem like a radical solution to a problem of perception, in the absence of meaningful action by the City, such change may be the only way to get wider support for the Airport.

There are additional reasons for advocating the transfer of control to a broader-based, regional entity. Such a transfer can be expected to facilitate regional cooperation for Airport expansion in a number of other ways. It would create a broader base for legislative action that might be needed for expansion. In addition, it would provide a broader base for financing, or obtaining state or federal government funds to finance, off-site infrastructure improvements and economic development projects that might be demanded by St. Charles Parish as a quid pro quo for its consent to airport expansion. It could help to change the dynamics of negotiation from a confrontation with an intrusive, "foreign" government to a negotiation between participants in a venture.

In addition, the formation of a regional authority would provide an opportunity to implement the management structure most likely to promote efficiency and growth. In that regard, BGR is recommending that serious consideration be given to hiring one of the world's premier airport management companies to run the Airport.

The citizens of New Orleans have much to gain and little to lose from transferring the Airport to an entity capable of marshaling support from other governments and the business community throughout the area. The indirect economic benefits anticipated from an expanded airport would far outweigh any economic benefit that the City can derive directly from its ownership of the Airport.

This seemingly anomalous result follows because the Airport is not, and except in limited circumstances cannot be converted into, a revenue-producing asset for the City. Federal law prohibits the City from using airport-generated funds for general municipal purposes. Furthermore, unless the City

should decide in the immediate future to participate in the FAA's pilot privatization program (a matter in which the City has shown no interest), existing interpretations of federal regulations would limit the City's recovery from the sale or lease of NOIA assets to certain unrecouped capital contributions and operating expenses. The City's capital contribution to the Airport as of December 31, 1997 totaled only \$2,674,912. By contrast, the state and federal contributions equaled \$68,599,445 and \$125,424,445 respectively.

Given these restrictions on airport revenues, what, if anything, would the City lose by turning over control of the Airport to a regional authority? The only significant potential loss identified by the persons whom BGR interviewed for this study is the loss of patronage opportunities. We believe that New Orleans has little else to lose from the transfer of airport authority.

BGR realizes that the existing administration did not create the patronage system associated with the Airport. The practice is said to go back many decades. The environment in which airports operate has changed dramatically, however, since the industry was deregulated twenty years ago. Management practices and inefficiencies that might have been tolerable in the regulated environment cannot be continued in the unregulated one without the City's and the region's eventually paying the price in a loss of competitiveness.

Effecting changes in the governance of NOIA ultimately depends on the good will and statesmanship of New Orleans' elected officials. Sacrificing a valuable political tool for the general good is a tall order. We nonetheless recommend that the Mayor and other elected leaders act quickly to replace a parochial system with one that can better serve both New Orleans and the region.

EXECUTIVE SUMMARY

Introduction

New Orleans International Airport, the air carrier airport serving the New Orleans metropolitan area, is owned by the City of New Orleans and operated by the New Orleans Aviation Board (the Aviation Board). It is located on approximately 1,600 acres, primarily in the City of Kenner in Jefferson Parish. A portion of one runway extends into neighboring St. Charles Parish.

Although the Airport has adequate capacity to meet existing demand, airport management expects it to reach operational capacity around 2004. Because the lead time required for airport expansion projects tends to be long, the Federal Aviation Agency's (FAA) rule of thumb is to begin planning for increased capacity when existing demand reaches 60 percent of instrument flight rule (IFR) capacity and to commence construction when demand equals approximately 80 percent of IFR capacity. At the present time, NOIA is operating at approximately 66 percent of serious delay capacity and 79 percent of "moderate" delay capacity.

The airport's 1990 Strategic Growth Plan calls for a number of significant improvements, including airfield expansion, terminal redevelopment, cargo area expansion, and the relocation and expansion of general aviation. Airfield expansion plans call for the addition of a new north/south runway and the conversion of an east/west taxiway into a runway.

The Airport has successfully completed a number of the improvements. Among the completed projects are the upgrading of the International Departure and Arrival Area to handle simultaneous international flights; the redevelopment of Concourse D to

provide Delta Air Lines with modern facilities; and the completion of a 75,000-square-foot cargo facility.

There are, however, serious challenges to the future growth and expansion of the Airport in general and to the implementation of the airfield improvements in particular. One problem is the growing, and increasingly more aggressive, opposition of local government bodies and citizens in or near the Airport. The City of Kenner claims veto power through its zoning laws over any major construction project. St. Charles Parish in August 1998 imposed a moratorium on airport expansion in that parish and is preparing airport zoning controls. Plans relating to runway construction have been put temporarily on hold by the Aviation Board because of environmental and safety concerns raised by residents of Jefferson and St. Charles Parishes.

The resistance of the surrounding communities is certainly understandable. Based on the information available at this time, it appears that the construction of the north/south runway will require the displacement of families living in two subdivisions in St. Charles Parish. Other neighborhoods in St. Charles, including Ama and Destrehan, might also be impacted. Kenner residents fear that the proposed development will exacerbate noise in north Kenner.

Officials in St. Charles Parish have expressed the fear that the new runway might force the James Business Park, a major revenue source for St. Charles, to relocate in Jefferson Parish. They also fear that the runway might disrupt other businesses in the Airline Highway commercial corridor. Any expansion in St. Charles Parish that impacts developed or

developable land has a far greater impact than the mere acreage numbers might suggest. According to parish officials, only 15 percent of the land in the parish is inhabitable.

Although the resistance is understandable, it poses a serious threat to the continued economic viability of the New Orleans region. While airports act as an important catalyst for business development wherever they are located, airport service plays a particularly critical role in the New Orleans region, where tourists, conventions, hotels, and restaurants account for one in six jobs.

Local government opposition is not the only problem facing the Airport. Another impediment to the airport's growth is the lack of strong, broad-based support from citizens, businesses, and elected officials in the region. Important growth issues—such as increasing the limited number of flights into New Orleans, obtaining state and federal funding, and maintaining NOIA's position as the premier airport in the Gulf Region—can be resolved only through concerted effort by businesses and governments in the region.

There are major obstacles, however, to forging the broad-based, public-private alliance needed to promote the Airport. The Airport does not enjoy the confidence of many in the business community and government circles. The draft operational audit report prepared for the Airport by Mitchell & Titus, LLP in conjunction with Black and Veatch and Bruno & Tervalon, CPAs (Operational Audit) identified, and rejected as untrue, a number of serious criticisms leveled at airport management by outsiders, including allegations of gross mismanagement and patronage. As the outside auditors' report stated, “[a] persistent allegation is that the Airport is rife with patronage.”

BGR's interviews confirmed the auditors' assessment that patronage is perceived as a major factor in airport operations. Replacing the historic image of the Airport as a mismanaged institution operated for the benefit of New Orleans politicians with the concept of a well-run economic engine operated for the benefit of the region as a whole is critical to the airport's future growth.

Purpose of This Study

The purpose of this study is to identify steps that can be taken to facilitate regional cooperation with respect to the Airport. To address the issue, BGR examines the situation of NOIA and how other major cities with similar geopolitical situations have dealt with other governments in the development of their airports. It then analyzes whether the various strategies and approaches used by these cities can help to solve the problems associated with the expansion of NOIA.

Our study deals at great length with governance issues. Our focus on these matters is limited, however, to the issue of whether changes in structure might facilitate regional cooperation with respect to the Airport. We are not independently investigating whether one form of government is more effective or efficient than another. We consider managerial issues only insofar as they impact regional cooperation.

Airport Governance and Management Structure in General

Many of the past proposals and current suggestions for dealing with the airport's growth issues call for changes in the airport's governance structure. In this section BGR sets forth a brief description of the various forms of airport governance that it encountered in its research and the

advantages and disadvantages attributed to each. It also looks at two management concepts: the nonprofit management structure proposed in the Operational Audit and the increasing use of for-profit management companies.

CITY-OWNED AIRPORTS

Many large airports are run by city or county governments. This form of governance suffers from a number of disadvantages that can impede efficiency. Such airports are vulnerable to political interference. In addition, their freedom in employment matters is constrained by applicable civil service laws restricting hiring and firing. Their ability to function efficiently can be hampered by citywide procurement rules.

Despite the disadvantages associated with this form of government, some very successful airports are operated on this model. Examples include Atlanta, Charlotte, and Miami.

STATE-OWNED AIRPORTS

State governments are not generally regarded as ideal candidates for running airports because of their bureaucratic tendencies. In addition, the airport's government is more distant than it should be from the community that the airport serves. Many of the useful aspects of state control—such as the ability to exercise the power of eminent domain and to otherwise override blocking actions by local governments in the interest of the region as a whole—generally can be achieved through authorities.

AUTHORITIES

Authorities are special purpose corporate entities, generally created by the state legislature. They can be established for a single purpose, such as the ownership and operation of an airport, or for multiple purposes.

There are certain advantages often attributed to this form: less red tape, a single purpose and focus, greater freedom from politics, and the ability to run the airport as a business. Authorities can take financing and development beyond limitations, such as debt and tax limits, through creative financing techniques. They can also improve management by operating independently of traditional municipal civil service systems, thus allowing for greater salaries and hiring/firing flexibility. They can bypass cumbersome local processes, including certain procurement and decision-making processes. Authorities are often perceived as less subject to local political influence, leading at times to the criticism that they are unresponsive to citizens' concerns.

The fact that an airport is owned and operated by an authority will not in and of itself result in better management and less political interference. The success of a given authority depends to a large extent on who the members are, what their true interests are, and the history and culture of the community.

One of the critical aspects in the success or failure of an authority is the quality of people appointed to the board. Politically motivated appointments leave an institution vulnerable to changes in administration and to the exertion of political influence on decisions of a business nature. Such appointments can prevent the community from realizing some of the benefits associated with this form of government.

By contrast, the appointment of a board with a strong business orientation can increase the likelihood that the enterprise will be operated in a businesslike manner. In order to foster a commercial approach, some authorizing statutes stipulate appointment criteria, such as specific business backgrounds. Others, such as the statute

creating the Port of New Orleans, provide for appointments from persons nominated by different civic, eleemosynary, and business groups. Ultimately, the effectiveness of such provisions depends on the good will of the person making the appointments.

Patronage is another area where the success of an authority depends on the good faith of the players. A switch to an authority can eliminate patronage; it can merely change the source of patronage; or it can result in the continuation of an existing patronage scheme, with politicians acting through their appointees.

As the Pennsylvania Economy League stated in a paper recommending the transfer of the Harrisburg International Airport from the State to a regional authority:

Although authorities are not and should not be represented as automatically leading to a more efficient operation, they are a mechanism whereby government can bring people with business skills in the community together with professional staff recruited from and paid at a level consistent with a particular industry. To the extent that an authority board and staff are composed of people with management abilities, it will serve the enterprise well.

Authorities can be particularly useful vehicles in the regional context, since they provide a framework for participation on a similar footing, if not in equal proportions, by multiple jurisdictions. A sense of ownership and participation by right, as opposed to participation through the largess of another, is added to the advantage provided by the more business-oriented framework.

PORT AUTHORITIES

Port authorities are structurally similar to other authorities. The only difference between a port authority that includes an airport and an airport authority is that the former serves multiple transportation, and sometimes economic development, purposes. A number of port authorities, including the Port of Portland, the Port of Seattle, the Port of Jacksonville, and the Port Authority of New York and New Jersey, own and/or operate airports.

BGR has not identified any advantage to incorporating an airport into a port authority as opposed to creating a single purpose airport authority. Authorities with air and port facilities operate them as separate endeavors, with largely separate staffs. There do not appear to be great opportunities for synergy, since the air and port freight sectors tend to have little overlap or opportunity for interface, with smaller, high-cost items going by air and bulk products by water.

AIRPORT PRIVATIZATION

Airport privatization, i.e., the sale or long-term lease of airports to private sector companies, was pioneered in 1987 when the British government sold the former British Airports Authority. Since that time, privatization has become a global trend.

The United States has not participated in this trend for a number of reasons. A major obstacle has been the FAA's interpretation of the revenue diversion rules applicable to airports that receive federal assistance. Under that interpretation, proceeds from the sale or lease of an airport are considered "airport revenues" and, as such, can only be used within the airport system for airport purposes. Thus, a city that sells an airport cannot use the proceeds for municipal expenses or improvements.

In October 1996, Congress enacted legislation allowing the sale or lease of up to five US airports to the private sector. The program basically permits the FAA to waive federal laws and regulations (such as the revenue diversion rule on sale and lease proceeds) that block privatization, provided that certain other requirements are met. The response has not been strong. To date, only two airports—Stewart International Airport, a small commercial airport in Newburgh, N.Y., and Brown Field Municipal, a general aviation airport in San Diego—have applied.

Proponents of privatization attribute a number of advantages to the form, including increased operating efficiencies, additional airport operating revenues, and more rapid and less costly development. Despite the lack of interest in the FAA's pilot program and the many uncertainties surrounding the impact of privatization on airports and their constituencies, some experts expect one or more major airport privatizations in the U.S. in the next decade.

FOR-PROFIT PRIVATE MANAGEMENT CONTRACTS

Private companies provide management services to Burbank-Glendale-Pasadena Airport (Burbank Airport), Indianapolis International Airport, Harrisburg Airport, and the Airmall at Pittsburgh International Airport.

The rationale for hiring a management company is twofold: (1) it replaces the nonprofit, noncommercial approach to airport management with market incentives to improve operating efficiencies, and (2) it enables an airport to draw on the broad-based expertise and strategies of professional managers operating in a worldwide arena. Major companies with substantial airport management experience are active in the US airport management market.

BAA (USA), which manages Indianapolis Airport, Harrisburg Airport, and the Airmall at Pittsburgh Airport, is a subsidiary of BAA plc, the former British Airport Authority. BAA, which has market capitalization of over eight billion dollars, owns and operates Heathrow, Gatwick, and five other airports in the United Kingdom. It moves approximately 90 million passengers a year.

Other management companies operating in the United States include Airport Group International (AGI, formerly Lockheed Air Terminal), American Port Services Inc. (formerly Johnson World Controls), and Schiphol USA, a subsidiary of the company that operates Amsterdam Airport Schiphol. Schiphol USA is part of a consortium that has been awarded the contract to rebuild and operate as a private enterprise the international arrivals building at John F. Kennedy International Airport. Like BAA, many of these companies have wide-ranging, in-depth experience in airport management.

Working with a group that has substantial experience in other markets, regardless of its experience in the US, can be an advantage. It opens the doors to innovative techniques developed elsewhere. For example, the change in the paradigm for US airport retailing precipitated by the Pittsburgh Airmall had its roots in BAA's London operations. As privatization grows overseas, it is reasonable to expect more and more management advances to originate there.

NONPROFIT MANAGEMENT

The Operational Audit calls for NOIA to contract out its management to a nonprofit entity. BGR is not aware of any case in which this structure has been used for the management of an airport. Nor has it identified any advantage to this mechanism that is not available through traditional or evolving forms of airport governance.

One of the proposal's stated goals, improving pay and allowing for more flexible hiring and firing of airport employees, can be achieved in the existing structure by modifying the civil service rules. It can also be achieved by transferring the Airport to a public authority, including one with a board appointed solely by the City.

Other stated goals, minimizing board interference in airport management and reducing the role of consultants, are not advanced by the proposed change. The Aviation Board is appointed by, and its role is defined by, the Mayor. A proposal which leaves the existing appointment process in place does not effect a systemic change. Any change in the role of board members remains dependent on the will of the Mayor. Any such change could be implemented now.

A nonprofit offers no greater business flexibility or performance incentives than an authority. Furthermore, a better non-governmental vehicle is available through the use of an experienced professional management company. The latter arrangement is far more likely than a nonprofit to succeed in creating an entrepreneurial management approach, since it introduces market incentives, market accountability, and a breadth of experience that is unavailable in the case of a start-up, nonprofit entity.

The use of a nonprofit carries the risk of making it far more difficult for the public to obtain information on airport operations. While the management contract with the City would be a publicly available document, the extent to which other contracts, arrangements, and meetings are open to the public could be the subject of endless debate and litigation. Given the airport's reluctance to produce documents that it is clearly required to make available to the public,

the effect would be to place the airport's contract-letting procedures farther below radar. While this risk might be tolerable in the case of relatively small enterprises, it becomes unacceptable where hundreds of millions of dollars are at stake.

The Experience of Other Airports

To help formulate strategies for dealing with NOIA's expansion problems, BGR examined the experience of other airports in the United States. BGR's review indicated that NOIA is not alone in its geopolitical situation. A number of major airports—including Atlanta, Cincinnati, Dallas/Fort Worth, Denver, and Ontario—are located entirely, or largely, outside the jurisdiction of the sponsoring entity. Others, like Cleveland and Seattle, are located on the perimeter of the sponsoring jurisdiction and require the cooperation of other jurisdictions for expansion. A third group—the Burbank-Glendale-Pasadena, Minneapolis-St. Paul, New York City area, Portland, and Washington, DC airports—are located within a jurisdiction encompassed in a multi-governmental arrangement.

Intergovernmental relations with respect to airports are more frequently characterized by conflict than by cooperation. Communities surrounding airports have become more aggressive in resisting expansion, asserting control over airport development through local zoning laws. In addition, such communities frequently turn to litigation. Atlanta, Burbank, Cleveland, Dallas/Fort Worth, Minneapolis-St. Paul, New York and Seattle airports have all been involved in litigation with one or more of the communities surrounding the airport. Most, but not all, disputes arise over noise and come to a head when an airport proposes expansion.

BGR identified a number of arrangements that have facilitated airport expansion and a number of approaches used by airports to ease regional tensions. Facilitating factors include the operation of the airport by a regional authority, the existence of strong regional planning groups, and state laws allocating zoning and eminent domain powers in favor of the airport. Proactive approaches by airports include comprehensive involvement of local communities in the airport's master planning process, effective use of noise abatement and mitigation techniques, and representation of local communities in full or advisory capacities on airport boards. These various arrangements and approaches are discussed below.

GOVERNANCE STRUCTURE AS A FACTOR IN REGIONAL COOPERATION

The airports studied by BGR for their regional issues operate under different forms of government. The Atlanta, Cincinnati, Cleveland, Denver, Ontario (California), and Seattle airports are owned and operated by single governmental units, such as cities or counties, or by authorities formed by single governmental entities. The Burbank-Glendale-Pasadena, Dallas/Fort Worth, Harrisburg, Minneapolis-St. Paul, New York City, Portland, and Washington, DC airports are owned and/or operated by regional authorities or other regional entities.

In some cases, the governance structure appears to be a historical accident. In others, the structure was chosen to facilitate cooperative endeavors, such as the acquisition of an existing airport or the construction of a new one. BGR did not discover any cases in which the ownership or control of an airport was transferred to resolve intergovernmental conflicts

arising from the environmental and social impacts of an airport on the surrounding community.

The form of government is not necessarily determinative of the success of an airport in dealing with its regional issues. Some airports owned by single entities have amicable relations with their host communities. The form of ownership can play a critical role, however, in contentious situations. BGR found one case, that of the Burbank-Glendale-Pasadena Airport, where the existing intergovernmental framework has helped the airport on an important legal issue.

The creation of a regional structure does not necessarily produce infinite harmony. Relationships that have worked for years can become stormy when circumstances or administrations change. One example of such turbulence is the lawsuit prompted by the expansion of the Burbank Airport. Another is the threatened demise of the Port Authority of New York and New Jersey.

THE USE OF INTERGOVERNMENTAL AGREEMENTS

Intergovernmental agreements have been used to create airport authorities or other governance vehicles, to resolve environmental issues and/or to spell out the terms on which airport expansion will be permitted. Such agreements have addressed a wide range of issues, including annexation, expansion, economic development, infrastructure development, noise reduction, compensation, land use, representation, zoning and eminent domain, surface water management, tax sharing, and procedures for future dispute resolution.

Some intergovernmental agreements dealing with airports have been entered into in response to litigation. Examples include agreements between the City of Cleveland

and the Port of Seattle with their respective neighboring communities. Others are the result of voluntary negotiations unrelated to litigation. Denver, for example, entered into an agreement with neighboring Adams County to allow the construction of a new airport in that county.

With few exceptions, city- or county-owned airports that want to expand into land outside their jurisdictions must reach accommodation with the government entity with jurisdiction over that land. Sometimes the airport must reach accommodation with other communities which will be environmentally impacted, even if the expansion does not involve the acquisition or development of land in those communities. The terms of the accommodation cannot be dictated by the airport; rather the airport must engage in serious, direct negotiation with the parties holding the keys to expansion.

REDISTRIBUTION OF ZONING AUTHORITY AND THE POWER OF EMINENT DOMAIN

Land use, zoning, and eminent domain powers are generally vested in municipalities and counties, rather than in airport owners. Thus, when an airport owned by one municipal entity is in an expansion mode that involves the territory of another, it has to reach accommodation with the surrounding community in order to effect its program.

There are two situations in which expansion has been possible without such consent: where the law grants the airport powers that supersede the host entity's traditional local land use powers, and where the host entity has ceded traditional land use powers through an intergovernmental agreement.

Extraordinary powers were given to the Dallas/Fort Worth International Airport (DFW) by the Texas legislature after the small cities in which the airport is located

tried to block an expansion program through their zoning powers. The legislature granted the airport exclusive powers, including the power of eminent domain, over territory within its boundaries as they might be expanded. This grant of power allowed DFW to condemn city streets. The legislature also prohibited the host cities from enforcing zoning or other ordinances purporting to regulate the use or development of airport property. While the solution cannot be characterized as cooperative, it provides a useful and effective model for resolving differences in a way that allows airport expansion in jurisdictionally complex situations.

State-mandated zoning provisions addressing physical hazards to flight are fairly common. In 1991 Florida went beyond the traditional boundaries of zoning regulation to address another hazard to airport growth: development around airports. The state legislature amended the Airport Zoning Act to prohibit new residential construction and other incompatible uses within certain distances from an airport. The Florida Department of Transportation indicated that compliance with this requirement is very spotty. Furthermore, because most of the areas surrounding airports are already developed, new land use controls are not very effective.

MASTER PLANNING

Atlanta is seeking to deal with its expansion problems by building a consensus through its master planning process. The City has gone to great lengths to involve the entire metropolitan region, including the communities surrounding the airport, in the airport planning process. Its approach goes far beyond the traditional one, whereby an airport develops its plan and holds such public hearings as are required by law.

The Master Plan Coordinating Committee, a 45-member committee with representatives from key areas of interest, initially developed 36 options for dealing with the airport's expansion. After evaluating the options under detailed quantitative and qualitative criteria, the committee reduced the number of options to four, plus a "no-build" option. A final proposal will be chosen from the remaining alternatives and subjected to a regional review process and public hearings.

METROPOLITAN PLANNING COMMISSIONS

A number of the airports studied by BGR are located in areas with strong regional planning commissions and/or legal requirements for regional coordination with respect to airport planning. In Minnesota, for example, the Metropolitan Council has planning authority over the seven-county metropolitan area for Minneapolis-St. Paul. The Metropolitan Council's authority includes, among other things, the power to adopt a long-range comprehensive policy plan for transportation and airports; to review comprehensive airport plans; to suspend indefinitely plans that do not conform to the development guide; and to approve certain airport capital projects, including runway construction or extension.

In connection with a quest for an alternative airport site in the metropolitan region, the Metropolitan Council was given authority to draw up criteria and guidelines for land use development within a three- to five-mile radius of any major, new airport site. Local governments were required to adopt controls in accordance with the council's criteria and guidelines.

GEOGRAPHIC REPRESENTATION ON AIRPORT BOARDS

The Cincinnati/Northern Kentucky International Airport (Cincinnati Airport), which is owned and operated by the Kenton

County (Kentucky) Airport Board, is located in Boone County, Kentucky and has a major impact on the City of Cincinnati. The airport has developed an unusual system for representation of these constituencies.

The airport has a board with seven voting members, all of whom must be Kentucky residents and one of whom must be from Boone County. It also has an advisory board. Until recently, the ten advisory members were appointed by the Governor of Kentucky based on the recommendation of the Kenton County Judge Executive. Although representation from Ohio was not legally required, most of the advisory members came from the Cincinnati business community.

In December 1998 the advisory board was expanded to eleven members and the appointment process changed. Each of the following now have one appointment to the advisory board: the Mayor of Cincinnati; the Commissioners of Hamilton County, Ohio; the Governor of Kentucky; the Judge Executive of Boone County; and the Judge Executive of Campbell County, Kentucky. The Judge Executive of Kenton County appoints the other six members.

Members of both the airport board and the advisory board serve on the board committees. Although the committees do not have authority to act on behalf of the board, they have substantial power. They originate all board actions, formulate policy with staff, and make recommendations. All members, voting and advisory, vote in committee.

Los Angeles' Ontario International Airport (Ontario Airport) also has an advisory panel. The panel was established in 1998 after a dispute between the airport and the City of Ontario over a proposed property acquisition by the airport. Through the panel the city of Ontario provides the Los Angeles board of

airport commissioners with “advice and recommendations” on issues pertaining to the airport.

NOISE REDUCTION

The Cincinnati Airport has made good use of noise reduction techniques and programs to reduce tensions within Boone County, its host community. Between 1991 and 1995 the airport spent more on noise reduction than any other airport in the United States, with expenditures twice those of the next two highest spenders combined. Noise reduction measures have included sound insulation and home purchase programs in Kentucky and modifications of flight procedures. The airport’s noise reduction plan mollified residents of the community with the greatest power to block airport expansion.

Strategies for the New Orleans Region

Formulating strategies to develop regional cooperation with respect to the Airport depends on the nature of the underlying issues and problems. As noted above, the issues fall into two broad categories: those relating to the physical impact of airport expansion on the surrounding communities and those inhibiting the formation of a strong regional public-private alliance to promote the Airport.

The experience of other airports suggests three strategies that might be useful in the New Orleans context: a reallocation of zoning and eminent domain powers, the negotiation of an intergovernmental agreement with Kenner and St. Charles, and the formation of a regional authority.

REALLOCATING EMINENT DOMAIN AND ZONING POWERS

As noted above, land use, zoning and eminent domain powers generally are vested in the local governmental entity. Thus, when an airport owned by one municipal entity is in an expansion mode that involves the territory of another, it has to reach accommodation with the surrounding community in order to effect its program.

There are two situations in which expansion has been possible without such consent: where the law grants the airport powers that supersede the host entity’s traditional local land use powers and where the host entity has ceded traditional land use powers through an intergovernmental agreement.

Existing law clearly vests land use and zoning powers with Kenner and St. Charles, the local government units. It precludes New Orleans from exercising the power of eminent domain for airport expansion. Neither the City of Kenner nor St. Charles Parish has ceded its local powers with respect to the Airport.

Because of uncertainties, contradictions and frequent reversals of cases, it is impossible to say with certainty whether the zoning and eminent domain powers could be reallocated in favor of the Airport. Subject to that caveat, it appears that the Louisiana Legislature could amend the statutes governing the power of eminent domain to authorize New Orleans or a newly established authority to exercise the power of eminent domain for the benefit of the Airport.

Whether Kenner or St. Charles Parish could be deprived by statute of their power over land use and zoning within their boundaries is open to serious question. One or more constitutional provisions, including those

dealing with local home rule entities and vesting zoning power in local government units, could very well preclude this change. Based on the interviews with government officials that BGR conducted for this study, such an amendment is not a realistic option.

INTERGOVERNMENTAL AGREEMENTS

The experience of other airports shows that, where the zoning power and the power of eminent domain rest with a government other than the airport proprietor, reaching accord with that government is essential for expansion. Although New Orleans owns the airport of today, it owns only a part of the airport of tomorrow. To grow NOIA, New Orleans, or whatever entity controls the Airport in the future, needs to come to terms with the governments that own and/or control the other essential pieces.

Coming to terms would involve the negotiation of a detailed intergovernmental agreement addressing all the issues that need to be resolved if the Airport is to expand. These include the scope of airport expansion, land acquisition, zoning, economic development opportunities, infrastructure improvements, taxation, noise abatement measures, relocation of affected residents and businesses, representation and ownership of the Airport, compensatory payments, and mechanisms for future conflict resolution.

There is no obstacle to undertaking such negotiations, although there will undoubtedly be real obstacles, legal and financial, to implementing particular solutions. The list of issues that have been put on the table to date is wide-ranging and includes infrastructure improvements and compensation for loss of tax revenues. Some of the items on the wish list are not permissible expenditures for airports and would have

to be funded from other sources, such as state funds or the City of New Orleans General Fund.

CREATION OF A REGIONAL GOVERNANCE STRUCTURE

Advantages

The creation of a properly constituted regional authority could contribute significantly to the airport's growth in a number of ways:

1. It could facilitate the formation of a broad-based, public-private alliance to promote the Airport. Important growth issues—such as increasing the limited number of flights into New Orleans, obtaining state and federal funding, and maintaining NOIA's position as the premier airport in the Gulf Region—can be resolved only through concerted effort by businesses and governments in the region.

As noted above, the obstacles to forging the needed alliance include the fact that the Airport does not enjoy the confidence of many in the business community and government circles. The airport's Operational Audit identified (and rejected as untrue) a number of serious criticisms leveled at the Airport by outsiders, including allegations of gross mismanagement and patronage. BGR's interviews confirmed the auditor's assessment that patronage is perceived as a major factor in operations.

Replacing the historic image of the Airport as a mismanaged institution operated for the benefit of New Orleans politicians with the concept of a well-run economic engine operated for the benefit of the region as a whole is critical to gaining support for the Airport. BGR believes that there are two ways to accomplish this change. One involves transferring control of the Airport to a regional entity; the other involves the

City's taking serious, meaningful steps to investigate, disclose and, where necessary, change its practices.

While transferring control to a regional authority might seem like a radical solution to a perception problem, in the absence of meaningful action by the City to investigate and deal with the issues, it may be the only solution. Unfortunately, the Operational Audit indicates that the City is unwilling to deal seriously with the issues that create so much cynicism with respect to the Airport. For example, the report summarily disposes of criticism of NOIA's contracting practices by arguing that patronage is innocuous if beneficiaries of the arrangement are well qualified and do competent work. It then proposes a governance change that exacerbates some of the problems bothering the critics by taking the contracting process farther below radar. At another point, the report attacks criticism as a cause of management problems. The tone of the Operational Audit does not instill great confidence.

2. A multi-parish regional authority could help to create a broader base of support for legislative action that might be needed to facilitate expansion. As discussed above, the outcome of expansion negotiations is seriously impacted by the legal parameters in which the debate takes place, particularly by what entity holds the trump cards for zoning and eminent domain. A regional authority, by involving more jurisdictions, could bring greater pressure to bear on the Louisiana Legislature to make adjustments favorable to expansion.

In particular, the Legislature is more likely to grant the power of eminent domain to a multi-parish authority than to the City of New Orleans. The availability of such power could be critically important. A portion of the land needed for the runway was

subdivided and sold in small parcels, and St. Charles Parish was granted rights-of-way in the areas marked for streets on the subdivision plat. Without the power of eminent domain, the Airport will have to negotiate purchases from many small landowners, any one of whom could block the development by refusing to sell.

3. Certain issues raised by St. Charles Parish, such as off-site infrastructure improvements and economic development projects, would require significant investments that cannot be made legally by the Airport. Clearly, the City of New Orleans lacks the means to make such investments. A regional authority would provide a broader base for financing, or for soliciting state or federal funds to finance, off-site infrastructure improvements or economic development projects.

4. Replacing the existing governance structure with a regionally based one would provide the appropriate framework for unified, coordinated planning far into the future. Although there are perceived threats, such as the potential expansion of Stennis International Airport, there is no consensus in southeastern Louisiana as to what form local airport development should take. There is not even a coordinated effort to develop an approach.

To date, planning has consisted of warring efforts by the Louisiana Airport Authority to place a new, regionally owned airport somewhere between Baton Rouge and New Orleans and by New Orleans to keep one here under its control. Placing the existing Airport under a properly constituted regional authority could help rationalize long-term planning decisions by eliminating from the debate over new airport vs. existing site the distortions that occur when the subtext is a change in control.

5. The formation of a regional authority could also help by uniting southeastern Louisiana in the promotion of increased air service for the region. Ultimately, the airport's growth, and its ability to maintain its service area, will depend on the region's promotional efforts at the state and federal levels.

BGR recognizes that the State has already established one regional body, the Louisiana Airport Authority, to promote air service for the region. That particular authority is ill suited to promote joint action, however, since it had its genesis in conflict rather than cooperation. (Some New Orleans legislators claimed that they were not consulted about its creation.) An effective regional authority can be created only with the consent and active participation of New Orleans and other key entities.

6. Transferring the Airport to an entity in which Kenner and St. Charles Parish participated could help overcome psychological hurdles to cooperation and create a more responsive framework for addressing the real environmental issues. Because the regional authority would allow multiple jurisdictions (including the host governments) to participate in airport governance on a similar basis, it has the potential to shift the dynamics of negotiation from a confrontation with an intrusive "foreign" government to a negotiation between participants in a venture. It also can create a better dynamic by redistributing the perceived benefits of ownership to all affected parties, eliminating the dichotomy created when the perceived benefits flow to one government and the negative impacts of the operation to another.

The citizens of New Orleans have much to gain and little to lose by transferring the Airport to an entity capable of marshaling support from other governments, as well

as the citizens and business community throughout the area. The indirect economic benefits anticipated from airport expansion and growth far exceed the revenues that the City can derive directly from its ownership of the Airport.

This seemingly anomalous result follows because the Airport is not a revenue-producing asset for the City and, except in limited circumstances, cannot be converted into one. The limitations are as follows:

1. Federal law requires that revenues generated by airports be used for airport-related purposes. It prohibits the City from using such funds for general municipal purposes. Thus, in making a transfer, the City would not be giving up any income.
2. Realistically, the City cannot convert the Airport into a revenue-generating asset by changing its use. While it might be possible in theory to develop the airport land for residential or commercial use, this could not be done without constructing a new airport elsewhere. The construction would require substantial local, state, federal and private investment and backing.
3. Furthermore, under existing federal regulations, the City's recovery from the sale or lease of the Airport or its assets would be limited in most circumstances to unrecovered capital contributions and operating expenses made or incurred in the preceding six years. As of December 31, 1997, the City had a total of \$2,674,912 of capital invested in the Airport. In addition, certain types of investments made by the federal government would have to be repaid.
4. An exception from the restriction on sale or lease proceeds is available for up to five airports that choose to participate in the FAA's pilot program for the transfer of airports to private entities. Congress has authorized the FAA to grant participating

air carrier airports waivers from laws precluding the retention of lease proceeds. Thus, New Orleans would have an opportunity to realize value through the transfer of the Airport to a private entity if it acted in the immediate future to participate in the pilot program. To date, New Orleans has shown no interest in this limited opportunity.

5. Laws or interpretations might change in the future to allow an airport to receive sale or lease proceeds on the transfer of an airport. New Orleans could preserve its potential to take advantage of any such change by retaining title to and leasing the Airport's assets to the regional authority on terms that would provide for payments to New Orleans under changed circumstances.

Given the above restrictions, what, if anything, would the City lose by turning over control of the Airport to a regional authority? In the course of BGR's interviews for this report, many interviewees suggested that the opportunity for patronage would be lost; they did not identify any other significant loss. Like them, we believe that New Orleans has little else to lose from the transfer of airport sponsorship.

In addition to the potential gains cited above, BGR perceives a number of other reasons for transferring control of the Airport:

1. In 1950, the City of New Orleans had 74 percent of the metropolitan area's population; it now has only 37 percent of the metropolitan region's population. From 1970 to 1990, New Orleans' eight-parish Metropolitan Statistical Area (MSA) experienced a 17 percent growth in population, with St. Tammany Parish's population increasing by 127 percent and St. Charles' by 68 percent. Orleans Parish's population declined by 16 percent in that period. Thus, while the Airport was once under the control of the

government elected by a majority of the area's population, this vital economic engine is now under the control of a government that represents a decreasing percentage of the metropolitan region's population.

There is a strong policy argument for aligning ownership and control of a public asset with the area that it serves and impacts. The case is particularly compelling in the case of airports, where major capital investments are made by government entities other than the sponsor. Federal and state investments dwarf the City's equity in the Airport, weakening equitable claims to ownership. As of December 31, 1997, the Airport had total contributed capital of \$196,698,802. In contrast to the City's contribution of \$2,674,912, the state contribution equaled \$68,599,445, and the Federal portion amounted to \$125,424,445.

2. The creation of a properly constituted regional authority would also carry with it the advantages attributable to the authority form of government. These include the creation of a framework that encourages the Airport to operate with a more businesslike focus. Besides eliminating cumbersome civil service rules, the change would help to control political interference. The ability of any one person or group to use the Airport for political purposes would be greatly diluted if board members were appointed by, and answerable to, different groups.

3. Because the establishment of a regional authority would involve a management overhaul, it would provide an opportunity to implement the management structure most likely to promote efficiency and growth. In that regard, one option worthy of serious investigation is a private management contract with one of the world's premier airport management companies. The use of such companies could eliminate much of the potential for intergovernmental squabbling

over patronage and jobs. It could also promote efficiencies and service improvements through an incentive-based compensation package.

Risks and Limitations

To some, converting to a regional authority raises the specter of Kenner and St. Charles blocking airport expansion through board control. Such a concern is, of course, a matter that must be taken into account in developing board composition. Such a possibility is not, however, a necessary result of a change in governance.

It is neither necessary nor desirable to give the airport's immediate neighbors control of the airport board. Indeed, structuring an authority in that way would defeat the very reason for a regional authority, by sacrificing the interests of the region as a whole to those of a particular constituency.

Host communities need to be represented as equals at the board level. They are, however, only one of a number of interests that need to be represented. A regional board should include, in addition to New Orleans, St. Charles Parish, and the City of Kenner, representatives from Jefferson and other parishes in the metropolitan region and, in view of the state's interest in and role in airport financing, the state government.

There are different ways of structuring a board. Although the most common is to base representation on population, others should be considered. For example, it might be appropriate to base representation in part on the distribution of travelers within the metropolitan area, recognizing that some areas of the region have a greater interest than others in the Airport.

Unfortunately, transferring the Airport to a regional authority (or to any other public entity) is not likely to ameliorate significantly the city's fiscal problems. As noted

above, the FAA's current stance on revenue diversion raises serious obstacles to the receipt of compensation by an airport sponsor on the sale or transfer of an airport. In simple terms, the FAA views sales proceeds and lease payments from such transfers as airport revenues that must be reinvested by the airport sponsor in airports. With the exception of an amount equal to unreimbursed capital contributions and operating expenses made or incurred within the previous six years, such payments cannot be used for general municipal purposes.

The FAA leaves the door open for negotiation on a case-by-case basis, indicating that it will apply the revenue-use requirement flexibly, taking into consideration special conditions and constraints imposed by a change in ownership. This opening should be pursued in any transfer of the Airport, with a view to obtaining for the City whatever compensation the FAA might allow. Expectations need to be tempered, however, since recent FAA positions, taken as a whole, suggest that significant capital infusion is a dubious possibility.

Impediments

BGR has not identified any insurmountable legal or financial obstacles to converting to a regional authority. The transfer would require authorizing legislation and the consent of various interested parties, such as the FAA and airlines. Provision would have to be made for the payment of existing bonds. The biggest hurdle would be political resistance from the City of New Orleans, which has made clear that it does not want to give up control of the Airport.

OTHER ISSUES

There are a number of specific issues that need to be addressed to facilitate expansion and growth of the Airport. These include the feasibility of a major new airport, NOIA's

communication with the citizens and representatives of the host communities, the airport's failure to address adequately operational issues that aggravate the host communities, and the community's cynical view of airport operations.

The Feasibility of a New Airport as a Near-Term Solution

BGR is concerned that the concept of a new airport may impede the resolution of the airport's existing problems by enabling political leaders to avoid the environmentally unpleasant and politically explosive issues associated with the expansion of NOIA. The concept persists despite growing evidence that such a new airport is not a realistic option for meeting the area's air needs.

BGR notes the following obstacles to the construction of a new airport in time to address the region's near- and intermediate-term needs:

1. The implementation of such a project would require concerted and unified efforts on the state, national, and local levels. Past discussions suggest that the regional consensus that would be necessary to implement the project is lacking. In the early 1990s the State of Louisiana, through the Louisiana Airport Authority, and the City of New Orleans conducted rival studies on the development of a new airport. Ultimately, the City of New Orleans abandoned its own quest for a new site. Both Baton Rouge and New Orleans opposed the concept proposed by the Louisiana Airport Authority. The FAA has indicated that additional funds for studying a new airport will not be forthcoming until such time as all the local parties are on the same page.
2. Only one major new airport, Denver International, has been built in the United States since DFW opened in 1976. Only one

ex-military base, Bergstrom Air Force Base, is being converted to civilian air carrier use. It will replace Austin's Robert Mueller Municipal Airport. Efforts by other cities or states to develop major new airports have come to naught.

3. Federal funding allocated to airport infrastructure projects is inadequate to meet projected demands. The American Association of Airport Executives (AAAE), an airport trade group, estimates that capital requirements far exceed available funding. According to the AAAE, surveys of airports have consistently shown a need for 10 billion dollars annually for airport development and capital reconstruction. The federal government has been providing approximately one-fifth of that amount through grants under the Airport Improvement Program.

The FAA indicates that additional capacity is crucial but that, given the high cost of new airport construction, construction of new airports is not a common capacity enhancement technique. Such construction faces formidable financial, environmental, social, and political constraints.

4. The situation of New Orleans, whether measured by delays or demand, is far less critical than that of many competing entities. In 1996, NOIA ranked 43rd in terms of aircraft delay (measured as delays of 15 minutes or greater per 1,000 operations). New Orleans measured delays of that magnitude for 0.83 operations per 1,000. Newark International Airport, by contrast, had delays of that magnitude for 65.25 operations per 1,000. Twelve other airports had delays in the double digits per 1,000 operations.

NOIA is not among the 31 airports expected to have annual aircraft delays exceeding 20,000 hours in 2006. The top priority for

a capacity increase in the FAA's Southwest Region is the construction of another parallel runway at DFW.

Communications

One of the recurring themes in interviews with political leaders representing Kenner and St. Charles was the lack of effective communication between the Airport, on the one hand, and the political leadership and citizens of impacted communities on the other. Although airport officials claim that they routinely apprise Kenner officials of NOIA development plans, Kenner council members have complained over the years that they are left in the dark. St. Charles Parish officials have also complained that they have been left out of expansion talks. Citizens complain that the Airport goes through the motions of public input in a pro forma way, without a desire for dialogue.

We recognize that there are certain established lines of communication for disgruntled citizens, such as the noise hotline and the airport's Noise Compatibility Committee. We also recognize that attempts are being made to encourage dialogue among political leaders in New Orleans, Kenner, and St. Charles. Examples of such efforts include the joint council meetings that were held over a year ago, the inter-council committee established last fall, and the Mayor's summit held in October 1998. While such efforts should be encouraged, the airport's efforts need to go beyond these measures in at least two ways. First, the Airport should embark upon a concerted public relations effort aimed at providing the host governments and their citizens with timely, complete and responsive information concerning its plans. Second, instead of seeking to minimize and control public input, it should actively listen and fully respond to community concerns.

Noise

The Airport needs to take a more active role in addressing operational issues that concern and aggravate the community. An example is the issue of overflights in the north Kenner neighborhoods. Kenner citizens have complained for more than a decade that airplanes deviate from established flight patterns calling for turns over Lake Pontchartrain, making an early turn over north Kenner. Their leaders blame the Airport, claiming that it is the only airport in the United States that does not impose penalties on airlines for flight pattern deviations. The Airport in turn points to the FAA, saying that only the FAA can impose such penalties.

Mayor Morial promised in December 1997 that the Airport would work with the FAA to correct the matter and that lease negotiations with the Airlines will require a commitment to keep to the flight paths. In October 1998 the Mayor announced that the airlines had asked the FAA to take action against the Airport for even considering this requirement, arguing that certain procedural channels must be followed and that such efforts usually do not result in any change. To date the issue remains unresolved.

Airport management should be able to determine, in a time frame shorter than 10 years, the extent to which planes are deviating from recommended flight patterns and what, if anything, can be done about the deviations. It should also be able to take the necessary actions to meet the community's request for enforcement or explain why it cannot. Failure to adequately address this kind of environmental issue over the course of years is interpreted as an indifference to community concerns. It also impedes the community's ability to deal with the major, new issues that expansion will present.

Management Issues and Regional Cooperation

As noted above, the airport's Operational Audit identified and rejected as untrue a number of criticisms leveled at the airport management by outsiders, including allegations of gross mismanagement and patronage. BGR's interviews confirm the auditors' assessment that patronage is perceived as a major factor in airport operations.

Confronting the allegations of mismanagement and patronage honestly, openly, and fully is a critical step in developing regional cooperation to promote the Airport. BGR is aware that the Airport purports to address these issues in its Operational Audit. Unfortunately, the report failed to address patronage and other issues impacting financial efficiency in a way that can give the community comfort that its suspicions are unfounded.

Recommendations

Having considered the strategies and experience of other airports and the specifics of the New Orleans situation, BGR recommends the following:

1. that a broad-based regional authority, with representatives from Kenner, St. Charles Parish, New Orleans, Jefferson Parish, and other parishes in the metropolitan region, be formed to sponsor and operate the Airport;
2. that the City of New Orleans retain title to the airport's existing land and facilities and lease them to the new authority on terms that would allow the City to receive compensation for the airport's assets should lease or other payments become legally permissible in the future;

3. that serious and immediate consideration be given to hiring one of the world's premier airport management companies;
4. that the City of New Orleans, Kenner, and St. Charles enter into a detailed intergovernmental agreement addressing all the issues that need to be resolved if the Airport is to expand in accordance with its plans;
5. that the concept of a major, new airport as a solution to the region's near- and intermediate-term air needs be abandoned;
6. that the Airport embark upon a concerted effort to provide the citizens of the local governments with timely, complete, and responsive information on airport matters of interest or concern to them; and
7. that the Airport take a more active role in addressing operational issues that concern and aggravate the neighboring communities.

BGR believes that the establishment of a regional authority is the optimal solution to southeastern Louisiana's airport issues and that steps should be taken immediately to accomplish this objective.

INTRODUCTION

Situation that Prompted Study

New Orleans International Airport, the air carrier airport serving the New Orleans metropolitan area, is owned by the City the New Orleans Aviation Board (Aviation Board). It is located on approximately 1,600 acres, primarily in the City of Kenner in Jefferson Parish. A portion of one runway extends into neighboring St. Charles Parish.

Although the Airport has adequate capacity to meet existing demand, airport management expects to reach operational capacity around 2004. Because the lead time required for airport expansion projects tends to be long, the FAA's rule of thumb is to begin planning for increased capacity when existing demand reaches 60 percent of instrument flight rule (IFR) capacity and to commence construction when demand equals approximately 80 percent of IFR capacity. At the present time, NOIA is operating at approximately 66 percent of serious delay capacity and 79 percent of "moderate" delay capacity. The airport's existing strategic growth plan calls for a number of significant improvements, including airfield expansion, terminal redevelopment, cargo area expansion, and the relocation and expansion of general aviation. Airfield expansion plans call for the addition of a new north/south runway and the conversion of an east/west taxiway into a runway.

There are, however, serious challenges to the future growth and expansion of the Airport in general and to the implementation of these improvements in particular. One problem is the absence of the strong, broad-based support from governments, businesses, and citizens needed to effectively promote the Airport. Another is the growing, and increasingly more

aggressive, opposition of local government bodies and citizens living near the Airport. The City of Kenner claims veto power through its zoning laws over any major construction project. St. Charles Parish in August 1998 imposed a moratorium on airport expansion in that parish and is preparing airport zoning controls. Plans relating to runway construction have been put on hold by the Aviation Board because of environmental and safety concerns raised by residents of Jefferson and St. Charles Parishes.

The resistance of the surrounding communities poses a grave, and increasing, challenge to the airport's ability to grow. Because the Airport and the surrounding communities are located outside of its jurisdiction, New Orleans cannot avail itself of options which would be available to it were they within its own territory, such as enacting protective zoning measures and acquiring land through the exercise of the power of eminent domain.

Resolving the obstacles to expansion is vitally important for the City, the region, and the State. The continued economic viability of the New Orleans region depends upon the availability of a first-class airport, with good access, adequate capacity, and reliable service. While airports act as important catalysts for business development wherever they are located, airport service plays a particularly critical role in the New Orleans region, where tourists, conventions, hotels and restaurants account for one in six jobs. The Airport generates direct and secondary spending of 850 million dollars.

The airport's importance to the State of Louisiana as a whole is illustrated by the relative size of the eight parishes in the

airport's primary service area. The population of over 1.3 million persons accounts for almost one-third of the state's population.

Purpose of Study

This study focuses on the difficulties posed by the fact that the Airport is owned by the City of New Orleans but located in the City of Kenner and St. Charles Parish. It also examines certain issues that impede the formation of a regional coalition of businesses and governments to promote the Airport.

The purpose of this study is to identify steps that can be taken to facilitate regional cooperation with respect to the Airport. To address the issue, BGR examines the situation of NOIA and how other major cities with similar geopolitical situations have dealt with other governments in the development of their airports. It then analyzes whether the various strategies and approaches used by these cities can help to solve the problems associated with the expansion of NOIA.

Assumptions and Limitations

The following assumptions and limitations apply to this study:

We have assumed that NOIA's projections regarding capacity are accurate and that the expansion projects set forth in the 1990 Strategic Growth Plan (Strategic Growth Plan) are necessary and adequate to meet the airport's projected medium-term needs.

Although our study deals at great length with governance issues, our focus on these matters is limited to whether changes in structure might facilitate regional cooperation with respect to the Airport. We are not independently investigating whether one form of government is more efficient or effective than another. We consider managerial issues only insofar as they impact regional cooperation.

Methodology

BGR contacted the airports listed in Appendix A to gather information on their government structure, location, history, and relationship with the surrounding communities. Through this process we identified a number of airports that have regional issues due to location. We also identified a number of airports that had changed their form of governance.

We conducted a more intense review of the following airports with regional issues: the Atlanta, Burbank-Glendale-Pasadena, Cincinnati, Cleveland, Dallas/Fort Worth, Denver, Ontario, Minneapolis-St. Paul, New York City area, Portland, Seattle, and Washington, DC airports. We also investigated why the following airports implemented or considered a change in governance: the Baltimore/Washington, Port Columbus, Harrisburg, Indianapolis, Milwaukee, Pittsburgh, and Washington, DC airports.

From these airports we requested information, such as copies of intergovernmental agreements or constituent documents, and reviewed those that were provided. We also conducted internet searches for news articles on certain of these airports and read available journal articles to learn more about their conflicts. In some cases, we reviewed laws enacted to address regional conflicts relating to airports.

We also read a number of journal articles on general issues impacting airport expansion and familiarized ourselves with the legal framework in which airports operate.

From the information collected we identified strategies to consider in the New Orleans context. We then proceeded along several fronts in seeking to identify the appropriate framework for maximizing regional cooperation for the NOIA.

We interviewed political leaders in Kenner, St. Charles, Jefferson, and New Orleans for their views on expansion, the desires and concerns of impacted communities, and the relevance of possible solutions. We also interviewed a number of citizens actively involved in regional transportation issues. See Sources Consulted for a list of interviews.

We reviewed newspaper articles and public documents relating to airport expansion plans; airport programs of direct concern to the surrounding communities; relationships between NOIA and those communities; and legal, contractual, and financial impediments to possible changes in governance. We also reviewed Louisiana and federal law on certain legal issues impacting airport expansion, including home rule powers, zoning, eminent domain, and revenue diversion.

GOVERNANCE STRUCTURES

Before discussing regional strategies, it might be useful to review briefly the governance structures of airports in general. In this section we review the different forms of governance that we encountered in our research. In addition, we briefly review two management concepts: the nonprofit management arrangement recently proposed in the airport's Operational Audit and use of for-profit management companies.

Most airports in the United States were initially owned by, and operated as departments of, city or county governments. Many of them still are. Over the years, however, more and more communities have turned to public authorities.

City-Owned Airports

Many large airports are run by city or county governments. The revenues and expenses are separated from the municipality's general funds and accounted for through enterprise accounting.

This form of governance suffers from a number of disadvantages that can impede efficiency. Such airports are vulnerable to political interference. In addition, their freedom in employment matters is constrained by applicable civil service laws, restricting hiring and firing. Their ability to function efficiently can be hampered by citywide procurement rules. Despite the disadvantages associated with this form of governance, some very successful airports are operated on this model. Examples include the Atlanta, Charlotte, and Miami airports.

State-Owned Airports

Very few major airports are directly owned by and operated as departments of state governments. Among them are Baltimore/Washington International, Honolulu, and Windsor Locks.

State governments are not generally regarded as ideal candidates for running airports because of their bureaucratic tendencies. In addition, the airport's government is more distant than it should be from the community that the airport serves.

Many of the useful aspects of state control, such as the ability to exercise the power of eminent domain and to otherwise override blocking actions by local governments in the interest of the region as a whole, generally can be achieved through authorities.

Regional Authorities

The trend in airport governance is toward public authorities. These authorities are special purpose corporate entities, generally created by the state legislature. They can be established for a single purpose, such as the ownership and operation of an airport, or for multiple purposes.

Several models are available for structuring the boards of public authorities:

- In some cases board members are chosen by the governor of the state, usually on a basis (such as representation from specified geographic areas) that takes into account the regional impact of the airport. Such appointments may require legislative confirmation.

- In other cases, members are chosen by some combination of mayors, county executives, and governing bodies of affected cities and counties.
- In some cases, a combination of state and local appointees is used.

There are certain advantages often attributed to this form of governance: less red tape, a single purpose and focus, greater freedom from politics, and the ability to run the airport as a business. Authorities can take financing and development beyond limitations, such as debt and tax limits, through creative financing techniques. They can also improve management by operating independently of traditional municipal civil service systems, thus allowing for higher salaries and more flexibility in hiring and firing. They can bypass cumbersome local contracting and decision-making processes. Authorities are generally perceived as less subject to local political influence, leading at times to the criticism that they are unresponsive to citizens' concerns.

The fact that an airport is owned and operated by an authority will not in and of itself result in better management and less political interference. The success of a given authority depends to a large extent on who the members are, what their true interests are, and the history and culture of the community.

One key to the success or failure of an authority is the quality of people appointed to the board. Politically motivated appointments leave an institution vulnerable to changes in administration and to the exertion of political influence on decisions of a business nature. Such appointments can prevent the community from realizing some of the benefits associated with this form of government.

By contrast, the appointment of a board with a strong business orientation can increase the likelihood that the enterprise will be operated in a businesslike manner. In order to foster such an approach, some authorizing statutes stipulate appointment criteria, such as specific business backgrounds. Others, such as the statute creating the Port of New Orleans, provide for appointments from persons nominated by different civic, business, and eleemosynary groups. Ultimately, the effectiveness of such provisions depends on the good will of the person making the appointments.

Patronage is another area where the success of an authority depends on the good faith of the players. A switch to an authority could eliminate patronage, change its source, or result in no fundamental change.

As the Pennsylvania Economy League stated in a paper recommending the transfer of the Harrisburg Airport from the State to a regional authority:

Although authorities are not and should not be represented as automatically leading to a more efficient operation, they are a mechanism whereby government can bring people with business skills in the community together with professional staff recruited from and paid at a level consistent with a particular industry. To the extent that an authority board and staff are composed of people with management abilities, it will serve the enterprise well.

Port Authorities

It has been suggested by those interested in NOIA's future growth that a port authority might be the appropriate governance structure.

Port authorities are structurally similar to other authorities. The only difference between a port authority that includes an airport and an airport authority is that the former serves multiple transportation, and sometimes economic development, purposes.

A number of port authorities own and/or operate airports. These include the Port of Portland, the Port of Seattle, the Port of Jacksonville, and the Port Authority of New York and New Jersey.

BGR has not identified any advantage to incorporating an airport into a port authority as opposed to creating a single purpose airport authority. Authorities with air and port facilities operate them as separate enterprises, with largely separate staffs. There do not appear to be great opportunities for synergy, since the air and port freight sectors tend to have little overlap or opportunity for interface, with smaller, high-cost items going by air and bulk products by water.

Airport Privatization

Airport privatization, i.e., the sale or long-term lease of airports to private sector companies, is a relatively new concept. The process was pioneered in 1987 when the British government sold the former British Airports Authority in an initial public offering.

The United States has not participated in airport privatization for a number of reasons. While improved financing options is a driving force for privatization in other parts of the world, according to the General Accounting Office, privatization is likely to result in increased financing costs and tax burdens for airports in the United States. In addition, privatization faces serious regulatory obstacles. Among these is the FAA's interpretation of the revenue diversion

rules applicable to airports that receive federal assistance. According to the FAA, moneys received from the sale or lease of an airport are "airport revenues" which must be reinvested in airports. Because the interpretation prevents the selling sponsor from transferring sale or lease proceeds to its general fund, it seriously undermines the incentive to sell airports.

In 1996 Congress enacted legislation establishing a pilot program for the sale or long-term lease of up to five airports to the private sector. The program basically permits the FAA to waive federal laws and regulations (such as the revenue diversion rules) that block privatization, provided that certain other requirements are met. The program has not had much success. Only Stewart International Airport, a small commercial airport in Newburgh, New York, and Brown Field Municipal, a general aviation airport in San Diego, submitted applications to participate.

Proponents of privatization attribute a number of advantages to that approach, including increased operating efficiencies, additional airport operating revenues, and more rapid and less costly development. Despite the lack of interest in the FAA's pilot program and the many uncertainties surrounding the impact of privatization of airports on their constituencies, some experts expect one or more major airport privatizations in the U.S. in the next decade.

For-Profit Private Management Contracts

Private companies now manage Burbank Airport, Indianapolis Airport, Harrisburg Airport, and the Airmall at Pittsburgh Airport. The Port Authority of New York and New Jersey has hired a private consortium to redevelop and operate the international arrivals terminal at John F. Kennedy International Airport.

The rationale for hiring a management company is twofold: it replaces the nonprofit, noncommercial approach to airport management with market incentives to improve operating efficiencies, and it enables an airport to draw on the broad-based expertise and strategies of professional managers operating in a worldwide arena. Indianapolis Airport, the largest of the privately managed airports in the United States, turned to private management because of concerns that rising passenger costs and flat concession revenues would negatively impact the airport's attractiveness to airlines. The authority believed that the existing nonprofit arrangement acted as a disincentive to correcting the problem, since under the residual lease agreement increased costs were just passed on to the airlines.

The arrangement between the Indianapolis Airport Authority (IAA) and BAA (USA) illustrates how a properly constructed private management contract can benefit the airport, airlines, and community as a whole. Under the ten-year contract that the authority and BAA signed September 1995, IAA assigned to BAA all airport operations and maintenance functions, including with some exceptions the power to negotiate and execute leases and contracts, while retaining airport ownership and certain policy level responsibilities. Under the performance-based contract, BAA receives no compensation until baseline cost savings (measured by improvement in net airline cost per enplaned passenger over adjusted baseline) are achieved. BAA shares with IAA in all savings above the baseline, splitting such saving 40/60 in the first year, 35/65 in the second and 30/70 thereafter. A bonus may be earned for measured improvements in customer service.

In its proposal BAA identified potential cost savings and non-airline revenue increases totaling over 100 million dollars over the life of the contract. It backed its guarantee of savings of 3.2 million dollars a year with a 50 million dollars letter of credit.

Under BAA management, productivity (defined as the number of passengers handled per employee) has improved by 15 percent. Financial performance, the surplus of non-airline income over operations and management, has improved by 60 percent. Concession and parking revenue increased by 50 percent from 1994 to 1996, resulting in a seven-million-dollar saving to the airlines. Indianapolis expects the lower airline costs to have a ripple effect that will benefit the airline, the city, and the consumer.

Major companies with substantial airport management experience are active in the U.S. airport management market. BAA (USA) is a subsidiary of BAA plc, the former British Airport Authority. BAA plc, which has market capitalization of over eight billion dollars, owns and operates Heathrow, Gatwick, and five other airports in the United Kingdom. It moves approximately 90 million passengers a year. BAA plc also has an interest in, and manages, airports in Italy and Australia.

BAA entered the U.S. market in 1992, when it was awarded a 15-year master-developer contract to design, build, lease, and manage Pittsburgh Airport's Airmall. The Airmall, a retail complex of national and international retail, food and beverage outlets selling merchandise at street prices, set the standard for retailing at airports throughout the U.S. Sales per passenger at Pittsburgh International increased from \$2.40 in 1992 to over \$7.00 in 1996.

In addition to managing the Airmall and the Indianapolis Airport, BAA (USA) took over the management of the Harrisburg Airport

when Pennsylvania divested that airport to a newly formed regional authority. In 1998 BAA (USA) was awarded a 15-year contract to develop new retail, food, and beverage facilities in Newark Airport's Terminals A and B.

Amsterdam Airport Schiphol, which operates the Amsterdam Airport, is involved in privatization efforts throughout the globe as the operator/manager in private consortia. Schiphol is a partner with a major New York developer and Lehmann Brothers in a joint venture to redevelop and operate Terminal 4 at JFK. Airport Group International (AGI), formerly Lockheed Air Terminal, has the longest track record in the United States. AGI provides management services to Burbank Airport, Stewart International Airport, and the international wing at Hartsfield. AGI, like BAA and Schiphol, also takes equity positions in airport privatization projects overseas. It holds equity positions in companies owning and operating airports in Australia and England and is part of a limited partnership that designed, financed, and built Terminal 3 at Toronto Pearson International. AGI now operates that terminal pursuant to a contract with the limited partnership. AIG also owns and operates three airports in Bolivia.

Working with a group that has substantial experience in other markets, regardless of its experience in the U.S., can be an advantage. It opens the doors to innovative techniques developed elsewhere. For example, the change in the paradigm for U.S. airport retailing precipitated by the Pittsburgh Airmall had its roots in BAA's London operations. As privatization grows overseas, it is reasonable to expect more and more management advances to originate there.

Nonprofit Private Management

The Operational Audit calls for NOIA to contract its management to a nonprofit entity. The reasons given are that nonprofit management would: (1) enable the airport to operate on a strictly businesslike basis without the inhibiting aspects of being a government agency and (2) allow implementation of compensation and personnel policies that would greatly increase the airport's ability to recruit and retain highly qualified personnel, while retaining overall governance and control with the City of New Orleans.

The structure was developed to facilitate the receipt of charitable donations for the maintenance and improvement of government-owned assets, like parks. The Audubon Commission/Institute is one example of this arrangement; the Central Park Conservancy in New York City is another. BGR is not aware of any case in which this structure has been used for the management of an airport.

Does the use of this untested mechanism offer advantages that cannot be achieved through traditional or evolving forms of airport governance? BGR has not identified any. One of the stated goals, improving the pay and allowing for more flexible hiring and firing of airport employees, can be achieved in the existing structure by modifying the civil service rules.

The other stated goals, minimizing board interference in airport management and reducing the role of consultants, are not advanced by the proposed change. The board's role is defined by the Mayor. A proposal which leaves the existing appointment process in place does not effect a systemic change. Any change in the role of board members is dependent on the will of, and could be implemented now by, the Mayor.

While the use of nonprofit management might make sense where charitable contributions are involved, a nonprofit is a strange choice for placing airport operations on a more businesslike basis. A better vehicle is available through the use of established for-profit professional management companies. The latter arrangement is far more likely than nonprofit management to succeed in creating an entrepreneurial management approach, since it introduces market incentives, market accountability, and a breadth of experience that is unavailable in the case of a start-up, nonprofit entity.

The use of a nonprofit carries the risk of making it far more difficult for the public to obtain information on NOIA operations. The state's sunshine laws apply to city boards and commissions and to authorities. The public bid laws apply to political subdivisions and authorities. The situation of nonprofits is far more ambiguous. The state's public meetings law does not include nonprofits in the definition of a public body, and the public bid law does not include nonprofits in the corresponding term, "public entity." The public records act includes "a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function." The phrase is not further defined.

While the proposed nonprofit's management contract with the City would be a publicly available document, the extent to which other contracts, arrangements, and meetings are open to the public could be the subject of endless debate and litigation. If nothing else changed besides the aviation board's contracting with a nonprofit management firm, the effect could be to place NOIA's contract-letting procedures farther below radar. While this risk might be tolerable risk in the case of relatively small enterprises, it becomes unacceptable where hundreds of millions of dollars are at stake.

Observations

The various airport governance structures have different strengths and weaknesses. For example, municipally-owned airports are considered to be more exposed than authorities to political interference; authorities are perceived to be better vehicles for business-oriented operations. It does not follow from these generalizations that all municipally-owned airports are doomed to political machinations and inefficiency. Nor does it follow that all authorities will be well-run enterprises. Any form of governance can be abused, its potential benefits lost. Conversely, the weaknesses in a form need not be exploited.

There is no platonic form of airport governance. Rather, the best form of government for a given airport is the one that best addresses the problems hampering its success. Such a government structure necessarily takes into account the weaknesses in the cultural and governmental milieu in which the airport operates. Thus, the structure that works well for an airport owned by a city noted for governmental efficiency will not necessarily make a good model for a city with patronage or other operational problems.

STRATEGIES USED TO ACHIEVE REGIONAL COOPERATION IN OTHER METROPOLITAN AREAS

General Observations

BGR identified a number of airports that face regional challenges. It focused on the following: the Atlanta, Burbank, Cincinnati, Cleveland, Dallas/Fort Worth, Denver, Ontario (California), Minneapolis-St. Paul, New York City area, Portland, Seattle, and Washington, DC airports.

NOIA is not alone in its geopolitical situation. A number of major airports—Atlanta, Cincinnati, Dallas/Fort Worth, Denver and Ontario—are located entirely, or largely, outside the jurisdiction of the sponsoring entity. Others, like Cleveland and Seattle, are located on the perimeter of the sponsoring jurisdiction and require the cooperation of other jurisdictions for expansion. A third group—the Burbank, Minneapolis-St. Paul, New York area, Portland, and Washington, DC airports—are located within a jurisdiction encompassed in a multi-governmental arrangement.

Intergovernmental relations with respect to airports are more frequently characterized by conflict than by cooperation.

Communities surrounding airports have become more aggressive in resisting expansion, asserting control over airport development through local zoning laws. In addition, such communities frequently turn to litigation. Atlanta, Burbank, Cleveland, Dallas/Fort Worth, Minneapolis-St. Paul, New York, and Seattle have all been involved in litigation with one or more of the communities surrounding the airport.

Most, but not all, disputes arise over noise and come to a head when an airport proposes expansion. Such expansion can

have a devastating effect on surrounding communities. For example, the City of College Park, which abuts Hartsfield in Atlanta, experienced a population drop from 30,000 to 18,000 as a result of displacement caused by airport expansion. It is expected to lose another 2,899 residents, and possibly more, in connection with the proposed addition of a fifth runway.

BGR identified a number of arrangements that have facilitated airport expansion and a number of methods used by airports to ease regional tensions. Facilitating factors include the operation of the airport by a regional authority, the existence of strong regional planning groups, and state laws allocating zoning and eminent domain powers in favor of the airport. Proactive approaches by airports include comprehensive involvement of local communities in the airport's master planning process, effective use of noise abatement and mitigation techniques, and representation of local communities in full or advisory capacities on airport boards. These various arrangements and approaches are discussed below.

Governance Structure

The airports studied by BGR have different forms of governance. A number are owned and operated by single governmental units, such as individual cities or counties, or by authorities formed by single governmental entities. The Atlanta, Cleveland, Denver, and Ontario, California airports are examples of the former; the Seattle airport is an example of the latter.

A number of the airports included in this study are owned and/or operated by regional authorities or other regional entities. These include the Burbank, Dallas/Fort Worth, Harrisburg, Minneapolis-St. Paul, New York City area, Portland, and Washington, DC airports.

In some cases the governance structure appears to be an historical accident. In others, the structure was chosen to facilitate cooperative endeavors. The Burbank-Glendale-Pasadena Authority (Burbank Airport Authority), was formed to acquire the privately owned Lockheed airport. The Susquehanna Regional Airport Authority was formed to acquire the Harrisburg Airport from the Commonwealth of Pennsylvania. The joint venture between Dallas and Fort Worth was undertaken to allow a pooling of resources for the construction of a new airport. The Metropolitan Airports Commission (MAC) was created by the Minnesota Legislature to end unhealthy competition between the airports of Minneapolis and St. Paul. The Metropolitan Washington Airport Authority was formed to acquire Dulles and National from the federal government, under whose management they were languishing.

Authorities can be particularly useful vehicles in the regional context, since they provide a framework for participation on a similar footing, if not in equal proportions, by multiple jurisdictions. A sense of ownership and participation by right, as opposed to participation by the largess of another, is added to the advantages of the more business-oriented framework.

BGR is not aware of any cases in which the ownership or control of an airport has been transferred to resolve intergovernmental conflicts arising from the environmental and social impacts of an airport on the surrounding community. It did find one

case, that of the Burbank Airport, where the existing intergovernmental framework has helped the airport on important legal issues.

FRAMEWORK HOLDS

The Burbank Airport

The Burbank Airport, which is owned and operated by the Burbank Authority, was created by the three municipalities in 1977 to purchase an existing airport from the Lockheed Corporation. For almost twenty years the Burbank Airport Authority's commission operated on a consensus basis. The consensus dissolved under pressure created by an expansion plan calling for the replacement of the existing terminal with a much larger one. The expansion required the acquisition of 130 acres of land from the Lockheed Corporation.

The City of Burbank, within whose boundaries the Burbank Airport is located, asserted that the Burbank Airport Authority was required to submit to a public review process and obtain approval from the City of Burbank to build the new terminal. The claim was based on a section of the California Public Utilities Code (PUC) requiring airports to obtain the prior approval of the local government entities before acquiring land. In October 1996 the Burbank Council adopted a measure disapproving the land acquisition.

A multitude of lawsuits followed. Among the contested issues was the applicability of the PUC in view of contractual arrangements among Burbank, Glendale, and Pasadena. The California Superior Court held that the agreement "expressly and unequivocally grants to the authority the right to acquire land for the operation of the Airport, to exercise the power of eminent domain, and to do all acts necessary or desirable to accomplish the purposes of the joint powers agreement." The City of Burbank has appealed that decision and filed another

suit challenging the land acquisition as a violation of Burbank's zoning and local (as opposed to PUC) land use laws. As of early March 1999, no decision had been rendered in that case.

The airport is an interesting cautionary tale. It is proof perfect that the form of governance cannot per se ensure harmony. It also illustrates the value of regional authorities and the intergovernmental arrangements establishing them.

POPULATION SHIFTS

BGR found cases in which the control of the board has been shifted from the municipal center of the metropolitan area to the suburbs or in which such change has been proposed to reflect population shifts. Minnesota's MAC was restructured to take the shift into account, and legislation to effect such a shift has been introduced with respect to Atlanta. A novel approach to dilute the influence of certain airport constituencies was proposed, but not adopted, in Milwaukee.

Minneapolis-St. Paul International Airport

The Minneapolis-St. Paul International Airport, which is owned and operated by the Metropolitan Airports Commission (MAC), originally had a nine-member board, with four members each from Minneapolis and St. Paul. The ninth, who served as chairman, was appointed by the governor from a noncontiguous county. The idea was to provide for equal representation between the two rival cities, with an outsider as a tie-breaker and moderator. MAC governs six airports in the metropolitan area.

In the late 1960s pressure to add suburban representation to MAC began to grow. Reasons cited in support of the change included the following: 60 percent of the metropolitan area population lived outside the Twin Cities; many of the

passengers are suburbanites; a large share of general aviation aircraft are used by suburbanites; a large percentage of freight is destined for the suburbs; five of the six airports owned by MAC are located outside the Twin Cities; and modern airports seriously impact the surrounding areas and land values with aircraft noise, air pollution, surface traffic, jobs, sewerage, and land development.

A number of bills were introduced in the Minnesota Legislature in 1969 to add suburban representation to MAC. In 1973 legislation was passed that increased the number of commissioners to include representatives of the seven-county metropolitan area. In 1987 MAC was expanded again, this time to include representatives from the entire state.

MAC now consists of a chairman and 14 commissioners. The mayors of St. Paul and Minneapolis are ex officio members and can designate representatives to serve for those cities. The governor appoints eight commissioners to represent specific metropolitan districts and four others from Greater Minnesota (two from cities with commercial air service and two from cities with general aviation airports). The governor also appoints the chairman, who can reside anywhere in the state.

Atlanta

Several proposals have been made to convert Hartsfield from a city-owned entity to a regional authority. In 1992, in the midst of a corruption scandal involving bribery and kickbacks at Hartsfield, legislation was introduced for a state take-over of "existing mismanaged airports." The bill died, and Hartsfield's management was cleaned up by the appointment of one of the most highly respected airport managers in the world.

Because of her managerial integrity, she was named “public official of the year” in 1996 by *Governing* magazine.

In early 1998 rumors began to circulate that the Mayor of Atlanta would not renew the contract of the airport manager, an appointee of his predecessor. Several months later he fired her, creating consternation and concern about a return to the troubling management practices that she had eliminated.

New legislation was introduced in the Legislature for the creation of a House Study Committee on the Governance of Hartsfield International Airport. The Committee was instructed to look at alternative forms of governance, including the creation of a single-purpose authority. The recitals to the legislation indicate that the study was prompted by two considerations: the extraterritorial location and regional impact of Hartsfield, and the past mismanagement. The Mayor of Atlanta had added fuel to the fire by dismissing the highly respected airport manager.

The *Atlanta Journal-Constitution* has urged the creation of a regional authority to operate the Airport. The paper has set forth the following reasons for a governance change. First, Hartsfield will always need to serve a region bigger than the City of Atlanta which contains a smaller and smaller percentage (now 10 percent) of the metropolitan population dependent on and impacted by the airport. Second, it needs to be insulated from corruption.

The *Atlanta Journal-Constitution* reports “an awkward racial tension” in discussions. To some, a regional authority represents a forceful type of public management free from political pressure. To others, it is a mechanism to deprive Atlanta of its traditional powers now that it is minority controlled.

Milwaukee

The State of Wisconsin, fearing that future expansion of the county-owned General Mitchell International Airport might be blocked by airport neighbors with a disproportionate voice on a key county committee, proposed restructuring that airport’s governance to provide greater regional representation. The proposal, structured to deal with the county’s reluctance to give up control of the airport, called for dual sponsorship. The county would be one sponsor; a newly created, state-controlled authority would be the other. The proposal was never implemented.

CIRCUMSTANCE CHANGE

The creation of a regional structure does not necessarily produce permanent harmony. Relationships that have rocked along for years can become stormy when circumstances or administrations change. One example of such turbulence is that spawned by the Burbank Airport terminal expansion described above. Others are the threatened demise of the Port Authority of New York and New Jersey (Port Authority) and litigation between Dallas and Fort Worth over increased flights from Dallas’ Love Field.

Port Authority of New York and New Jersey

Relationships between the Port Authority and the City of New York have deteriorated under the Guiliani Administration. The underlying source of friction is the New Yorkers’ perception that the Port Authority is taking money from New York to subsidize New Jersey projects and commuters. One sore point concerns the allocation of construction moneys; the other concerns the subsidization by the Port Authority of riders on PATH, the mass transit rail system from New Jersey.

Disagreement came to a head when lease payments to New York City for JFK and La Guardia declined from 87 million dollars

a year to three million, the minimum allowable under a complicated lease formula. The decline was due to lease payment offsets for investments and expenses associated with a botched renovation plan undertaken and ultimately abandoned by the Port Authority.

Mayor Guiliani has proposed breaking up the Port Authority, calling on New York State to take over some functions, and calling for the creation of a new authority to operate the city's airports. In short, all is not well with regionalism at the Port Authority of New York and New Jersey.

Dallas/Fort Worth

The Cities of Dallas and Fort Worth are embroiled in litigation springing from a congressional amendment to the Wright Amendment, the perimeter-rule legislation passed in the late 1970s to protect DFW. The amendment expanded permissible operations from Love Field in Dallas by allowing jets modified to carry 56 or fewer passengers to fly nonstop out of Love Field and adding four additional states to the list of those open to nonstop service on larger aircraft.

Fort Worth contends that opening Love Field to long-haul service will violate the contracts and bond covenants that the cities signed in 1968 as partners in DFW. Dallas claims that it is powerless to ignore Congress' changes for Love Field. The parties continue to negotiate.

Redistribution of Zoning Authority and the Power of Eminent Domain

Land use, zoning, and eminent domain powers are generally vested in municipalities and counties, rather than airport owners. When an airport is owned by the governmental unit in which it is located, that entity can use its powers to promote airport

development. When an airport owned by one municipal entity wants to expand in the territory of another, it has to reach accommodation with the surrounding community in order to effect its program.

There are two situations in which expansion has been possible without such consent: where the law grants the airport powers which supersede the traditional local land use powers and where the host entity has ceded traditional land use powers through an intergovernmental agreement. This section discusses two examples illustrating the first of these options: statutory changes enacted in connection with the expansion of DFW and Florida's Airport Zoning Act. It also discusses legislation enacted by Minnesota to control conflicting development and land speculation pending a search for a new airport site and changes made in Georgia law to revoke the power of eminent domain.

Dallas/Fort Worth

DFW is a municipal airport owned and operated by the Cities of Dallas and Fort Worth pursuant to a joint venture agreement. The airport, which opened in 1974, is located primarily in the cities of Grapevine, Irving, and Euless (the DFW Host Cities), which annexed the unincorporated land on which the airport was to be located. A small portion is in Fort Worth.

By 1987 the airport had become the second largest airport in the world. At that time, the governing board (DFW Board) proposed an expansion program that included new runways, taxiways, aircraft holding areas, and other facilities. The DFW Host Cities reacted by enacting zoning ordinances that required the airport to submit revised site plans and environmental impact statements in order to obtain special governmental use permits. The DFW Board refused to submit its expansion plans and filed suit. The DFW Host Cities countersued.

The main issues before the court were: whether federal law preempted local land use regulations with respect to airports; whether the power granted to the DFW Board under Texas' Municipal Airports Act preempted the local zoning ordinances enacted by the municipalities pursuant to their home rule provisions; and whether the Cities of Dallas and Fort Worth, as owners of DFW, had the power of eminent domain over streets in the DFW Host Cities. At issue was property onto which the airport desired to expand, as well as property that was already a part of the airport.

The court held that Congress had not preempted local land use regulation; that the Texas Municipal Airports Act, which gave joint airport boards broad-based powers to acquire, construct, maintain, and operate airports inside and outside of their owner cities' boundaries, did not deny non-owner cities within whose boundaries the airport was located the power to zone and otherwise control land use within the airport. The court also held that the Cities of Dallas and Fort Worth did not have the power to condemn the non-owner cities' streets in expanding the airport.

In response to the court ruling, the Texas Legislature amended portions of the Texas Municipal Airports Act to give airport boards exclusive powers over territory within their boundaries as they might be expanded. The Legislature also gave the Cities of Dallas and Fort Worth the authority to condemn the city streets of the host cities in expanding the airport. The amendments also prohibited host cities from enforcing zoning or other ordinances purporting to regulate the use or development of airport property.

The cities again sued, arguing that the bill unconstitutionally transferred self-government power from one home rule city to the

other. The court upheld the constitutionality of the law and the expansion was able to proceed. While the solution cannot be characterized as cooperative, it provides a useful and effective model for resolving differences in a way that allows airport expansion in jurisdictionally complex situations.

Florida's Airport Zoning Act

Because its economy is heavily dependent on tourism, Florida is committed at the state level to protecting airport capacity. It addresses airport land use conflicts through zoning and comprehensive planning requirements imposed under the state's growth management act.

Florida has had in effect since 1945 an airport zoning statute that requires political subdivisions with airport hazard areas in their boundaries to prevent the creation of airport hazards through zoning regulations. Where an airport hazard area is located outside the jurisdiction of the entity owning the airport, the political subdivision owning or controlling the airport and the one in which the airport hazard area is located are required to enter into intergovernmental agreements or establish joint boards to formulate and enforce such regulations. Where there is a conflict between zoning regulations adopted under this chapter and any other governmental regulation, the more stringent regulation applies.

Provisions addressing physical hazards to flight are fairly common. In 1991 Florida went beyond the traditional boundaries of regulation to address another hazard to airport growth: development around airports. In that year, the state legislature amended the Airport Zoning Act to prohibit new residential construction and other incompatible land uses within certain distances from an airport. Where the governing body of an airport has conducted a

noise study that meets FAA requirements, residential construction is prohibited within the noise contours defined as incompatible with residential use under federal regulation.

The Florida Department of Transportation indicated that compliance with this requirement is very spotty. Furthermore, because most of the areas surrounding airports are already developed, new land use controls are not very effective.

Minnesota

Under Minnesota law, the Metropolitan Airport Commission (MAC) has the power of eminent domain within the Minneapolis-St. Paul metropolitan area. It can acquire under this provision land already dedicated to a public use. Its ability is restricted, in the case of the acquisition of other municipally owned airports, by a requirement for the consent of the municipality.

MAC's power is not unfettered, however. MAC is required to coordinate with, and in some cases obtain approvals from, the regional planning commission for the Minneapolis-St. Paul metropolitan region (Metropolitan Council). In addition, the legislature has imposed certain restrictions on airport expansion. MAC cannot extend the western boundary of the airport into the neighboring City of Richfield beyond a certain boundary.

The legislature has directed MAC to reach accommodation with surrounding communities over issues relating to the construction of a new runway. A law enacted in 1996, after the Metropolitan Council and MAC opted for the expansion of the existing airport over construction of a new one, requires MAC to enter into a contract with each city that would be impacted by runway expansion. The law requires the contract to stipulate that MAC will not construct a third parallel runway

without the affected city's approval. If MAC fails to enter into such a contract, and the cause is MAC's failure to negotiate in good faith, MAC is required to increase spending on noise reduction by 100 percent over the previous year's expenditure.

While MAC and the Metropolitan Council were studying the possibility of a new airport site, the State of Minnesota enacted legislation to protect targeted areas from conflicting development and land speculation. The legislation imposed certain zoning restrictions on areas designated by the Metropolitan Council as candidates for selection as a search area for a new major airport. It provided that all unzoned land within the candidate search area would be zoned exclusively for agricultural purposes. It also prohibited changes in zoning or variances and conditional uses that, in the opinion of the Metropolitan Council, were inconsistent with the comprehensive plan for the local government unit, metropolitan system plan, or the development and operation of a new major airport in the search area.

The legislation imposed more stringent restrictions on the area ultimately selected for the search area. It provided that the land zoned exclusively for agricultural purposes pursuant to the provisions described above would retain that designation. It also prohibited zoning changes, variances, and conditional uses that were disapproved by the Metropolitan Council as inconsistent with airport development.

In 1996, after the Metropolitan Council abandoned the quest for a new site, the legislature passed a law stipulating that the Metropolitan Council could not require a local government to take zoning or land use actions to preserve land for a new airport.

Atlanta

Prior to 1992, the City of Atlanta could exercise the power of eminent domain for airport purposes in areas outside city limits. The legislature withdrew the power in 1992, amidst speculation that Atlanta was planning to build a second airport. Atlanta might have to return to the legislature to revisit the issue in connection with its plans to add a fifth runway at the existing airport, if it cannot reach accommodation with College Park, the city that will be negatively impacted by the proposed runway.

Geographic Representation on Airport Boards

Cincinnati

The Cincinnati/Northern Kentucky International Airport (Cincinnati Airport), the air carrier airport for the Cincinnati metropolitan area, is owned and operated by the Kenton County (Kentucky) Airport Board. The airport is located, however, in Boone County, Kentucky, and has a major impact on the City of Cincinnati.

The airport has a board with seven voting members, all of whom must be Kentucky residents and one of whom must be from Boone County. It also has an advisory board. Until recently, the ten advisory members were appointed by the Governor of Kentucky based on the recommendation of the Kenton County Judge Executive. Although representation from Ohio was not legally required, most of the advisory members came from the Cincinnati business community.

In December 1998 the advisory board was expanded to eleven members and the appointment process changed. Each of the following now has one appointment to the advisory board: the Mayor of Cincinnati, the Commissioners of Hamilton County, Ohio, the Governor of Kentucky, the Judge

Executive of Boone County, and the Judge Executive of Campbell County, Kentucky. The Judge Executive of Kenton County appoints the other six members.

Members of both the airport board and the advisory board serve on the board committees. Although the committees do not have authority to act on behalf of the board, they have substantial power. They originate all board actions, formulate policy with staff, and make recommendations. All members, voting and advisory, vote in committee.

Los Angeles

Los Angeles' Ontario International Airport also has an advisory panel. The panel was established in 1998 after a dispute between the airport and the City of Ontario over a proposed property acquisition by the airport. Through the panel the City of Ontario provides the Los Angeles board of airport commissioners with "advice and recommendations" on issues pertaining to the airport.

Noise Reduction

Cincinnati

Noise has been a serious issue for the rapidly growing airport, affecting residents of both Ohio and Kentucky. The brunt of noise falls according to the direction of the runway, with east/west runways negatively impacting Kentucky residents and north/south runways impacting residents of both Kentucky and western Hamilton County, Ohio. Prior to this decade there was one north/south runway and one east/west runway. A second north/south runway was added in the early 1990s. The airport's recently adopted master plan distresses Ohio residents, since it calls for the creation of a third north/south runway.

The Cincinnati Airport has made good use of noise reduction techniques and programs to reduce tensions within Boone County, its host community. Between 1991 and 1995

it spent more on noise reduction than any other airport in the United States, with expenditures twice those of the next two highest spenders combined. Noise reduction measures have included sound insulation and home purchase programs in Kentucky and modifications of flight procedures.

The airport's noise reduction plan has mollified Kentucky residents, while leaving Hamilton County residents unsatisfied. Ohio residents, particularly those located in the southwestern corner of Hamilton County, claim that airport planning and noise reduction measures favor Kentucky residents at their expense. They have expressed their frustration in a number of ways, including the installation of their own noise monitors and unfulfilled threats to boycott businesses of board members. They have not instigated litigation or taken any other steps that would seriously affect the airport's growth.

Airport management denies that the airport's noise mitigation and abatement programs favor Kentucky residents over Ohio residents. According to the airport's Deputy Director of Aviation, Ohio residents have not been included in sound insulation and buy-out programs because they fail to meet the FAA's requirements for participation in such programs. In addition, several noise abatement procedures are in place to reduce noise in Ohio. The air control tower directs departures on the north/south runways to the south, away from Ohio, except when wind conditions require otherwise. Departures between 10 p.m. and 7 a.m. are from the east/west runway.

The Cincinnati Airport's approach to noise issues, aggressive spending to improve the environment in the host community and airfield planning that minimizes noise impact on that community, appears to have contributed to the creation of good relations with the community with the greatest power to block airport expansion.

Intergovernmental Agreements

Intergovernmental agreements have been used to create airport authorities or other intergovernmental vehicles, to resolve environmental issues, and/or to spell out the terms on which airport expansion will be permitted. This section addresses the latter type of agreement.

With few exceptions, city- or county-owned airports that want to expand into land outside their jurisdiction must reach accommodation with the government entity with jurisdiction over that land. Sometimes the airport must reach accommodation with other communities that will be environmentally impacted, even if the expansion does not involve the acquisition or development of land in those communities.

Some intergovernmental agreements dealing with airports have been entered into as a response to litigation. Examples include settlement agreements between the City of Cleveland and the Port of Seattle with their respective neighboring communities. Others are the result of voluntary negotiations unrelated to litigation. Denver, for example, entered into an agreement with neighboring Adams County to allow the construction of a new airport in that county.

Intergovernmental agreements have been used to address a wide range of issues, including annexation, expansion, economic development, infrastructure development, noise reduction, compensation, land use, representation, zoning and eminent domain, surface water management, tax sharing, and procedures for future dispute resolution. The following examples give a sense of their scope.

Cleveland

Hopkins International Airport (Hopkins), owned and operated by the City of Cleveland, is located in Cleveland at a point abutting the City of Brook Park. In 1992, Cleveland announced an airport expansion plan that called for the lengthening of one runway and the construction of two others on land located in Brook Park. The proposal would have required the demolition of the International Exposition Center (I-X Center), a privately owned development that is a major generator of tax revenues and jobs for Brook Park. It also called for the relocation of the Aerospace Technology Park.

Brook Park found the airport proposal unsatisfactory and amended its zoning ordinance to require that Hopkins comply with the Brook Park master plan, to impose noise and land use restrictions, and to require Cleveland to obtain a conditional use permit before constructing a runway. Cleveland filed and lost a suit challenging Brook Park's zoning requirements.

As a result of the loss in court, Cleveland was forced into negotiations with Brook Park. The two cities reached a settlement. The agreement allows the City of Cleveland to build a new, 6,000 foot runway, which will eventually be expanded to 10,500 feet. Another runway will be extended to 12,000 feet. It also allows Cleveland to annex land within an "airport envelope." (The runway lengths were later reduced under pressure from another municipality.)

Cleveland in turn has agreed to cede more than 85 acres of Cleveland-owned property to Brook Park, to leave the I-X Center alone, and to support construction of a new road along the airport's southern perimeter, allowing Brook Park to develop the area for commercial and industrial uses. In addition, it transferred a two-mile commercial and industrial corridor. Under the terms of the

settlement Brook Park will pay Cleveland 3.75 million dollars, and Cleveland will pay Brook Park 8.75 million dollars.

The agreement is not the last word on expansion. In the fall of 1998 a task force formed by the Greater Cleveland Growth Association, the area's equivalent of a chamber of commerce, issued a report indicating that the negotiated expansion was inadequate. The association concluded that the planned expansion would suffice only until 2010, at which time serious delays would start occurring. In their view, a second new runway would be needed by that year and a third one by 2020. The mayor of Cleveland maintains that service will be adequate until 2015. A committee of corporate and political leaders from Cleveland and Brook Park has been formed to determine how a second new runway can be added.

Denver

The Denver International Airport (DIA), which opened in 1995, is owned and operated by the City and County of Denver. It is connected to Denver only by a 12-mile long expressway. It is located on land formerly owned by Adams County and is surrounded by the Counties of Arapaho and Adams and the City of Aurora.

In 1988 Denver and Adams County entered into intergovernmental agreements with respect to the proposed airport. Pursuant to the agreements, and after the approval of Adams County voters, Denver annexed 43.3 square miles of Adams County. The annexed territory included the site for the airport; a transportation corridor for roads connecting the site to the interstate; and land at the ends of the runways for noise, safety, and other airport purposes. The agreement also addressed runway configuration, flight corridors, and anticipated noise impacts of the new airport. It required Denver to install noise monitors and meet certain standards

and made Denver liable for fines of \$500,000 per incident if its noise-control efforts failed.

The agreement also addressed land use matters. It allowed Denver to acquire residential development rights within the noise-impacted area around the airport. It also provided that as a condition to any enforcement of alleged violation of noise restrictions, Adams County and the appropriate municipalities had to adopt land use restrictions on residential development within such noise area.

The agreement, among other things, required Denver to pay compensation to two school districts for the loss of property taxes payable to such districts as a result of their inability to impose property taxes on the annexed land.

Port of Seattle

Seattle-Tacoma International Airport (Sea-Tac Airport) is located primarily in the City of SeaTac, midway between the cities of Seattle and Tacoma. It is owned and operated by the Port of Seattle (Seattle Port).

In 1996 the airport adopted a master plan calling for 1.7 billion dollars in improvements, including a third runway. The proposed expansion produced a number of lawsuits. The City of SeaTac filed two lawsuits. Other cities around Sea-Tac Airport formed the Airport Communities Coalition (ACC), which filed another series of lawsuits to block the runway.

Although the Seattle Port contested at every turn the actions of the ACC, it settled with SeaTac, the host city, to allow the expansion to proceed. The complicated agreement provides a fascinating outline of the kinds of issues involved in expansion negotiation. It is noteworthy because of its emphasis on coordinated master planning and long-term teamwork to implement the agreement.

In the interlocal agreement, the City of SeaTac and the Seattle Port agreed to engage in cooperative comprehensive planning to address issues related to the port's airport properties and activities and the city's economic development, land use, and related goals. The objective of the planning is the recognition of the port's master plan in the city's comprehensive plan and vice versa. The scope of the planning includes a land use and zoning component for port properties, for non-port properties adjacent or near to port-owned properties, and for those within the 65 dnl noise contour; a surface water management element; critical area regulations; a transportation element to include coordinated strategies for parking, transit, parking taxes, impact fees, and other mitigation; a capital facilities element implementing and coordinating the Seattle Port's and the city's master plans; and additional elements addressing joint economic development.

The interlocal agreement also includes a community relief package, which includes monetary payments, the joint study of a city center; joint cooperation for economic development; a joint transportation study; the sharing by the Seattle Port of costs to mitigate the impact of increased airport traffic on city streets, beautification measures, and provisions addressing parking; and the implementation of the airport's land acquisition program.

The agreement is for a ten-year term with automatic renewal for five-year periods, subject to termination in accordance with stipulated procedures. It provides for the dismissal of existing litigation and set forth procedures for dispute resolution. It contemplates, and provides the basis for establishing, teams to work on a long-term basis for the implementation of the provisions of the agreement.

Master Planning

Atlanta

The City of Atlanta has gone to great lengths to involve the entire metropolitan region, including the communities surrounding the airport, in the airport planning process. Its approach goes far beyond the traditional one, whereby an airport develops its plan and holds such public hearings as are required by law.

The airport's master planning process involves several phases. The first, the Study Design Phase, produced the game plan, including schedule, budget, and management plan to guide the process. The second phase, the formulation of the Vision and Policy Document, consisted of the collection of input from hundreds of stakeholders, representing diverse interests and perspectives. As part of that phase, the airport held 65 "scoping sessions," five public meetings, and three visionary forums. These were attended by community groups, airport tenants, users and service providers, elected officials, regulatory agencies, planning agencies, business and industry groups, and citizens of the Atlanta metropolitan area. At these sessions the airport's director described the airport's situation: forecasts showed a doubling of traffic; and Delta Air Lines, the principal tenant, would go elsewhere if its needs were not met. The director then sought input as to what the community wanted.

The third phase, which is in process now, consists of the formulation of the technical master plan by the Master Plan Coordinating Committee, a 45-member committee with representatives from key areas of interest. Members include elected officials, airport users and service providers, airport tenants, environmental groups, regulatory agencies, planning agencies, community groups, and local government administrators.

The committee, using the airport's forecasts and the criteria set forth in the vision statement, initially developed 36 options for dealing with the airport. After further refinement and evaluation by the committee, the number of options was reduced to 15. These were further reduced to four, including a "no-build" option, after being evaluated under numerous quantitative and qualitative criteria. A final proposal will be chosen from the remaining alternatives and subjected to a regional review process and public hearings.

A split developed in the Master Plan Coordinating Committee between those favoring expansion and the representatives of the surrounding communities. The split was reflected in a procedural vote to determine whether to retain the existing guidelines for rating the options, under which the "no-build" option scored highest. The vote was 18 to 14 in favor of revisions. The airport director decided to keep the existing criteria, in view of the lack of a clear-cut consensus in favor of change.

The airport's master planning process reflects the grass roots approach to master planning used by the City of Atlanta, a process that gives a real voice and influence to the neighborhoods through neighborhood planning units. The airport seems to be using the same approach—having constituent groups with disparate interests work it out—on a metropolitan area basis.

Minnesota

Two public groups were formed to assist MAC in the development of a long-term comprehensive plan for the existing airport. One group, the Minneapolis-St. Paul (MSP) Airport Planning Task Force, was a broad-based group composed of local, state and metropolitan officials. They provided a sounding board for the work in progress. The MSP Interactive Planning Group

consisted of elected officials from communities adjacent to the airport. That group's purpose was to help determine off-site impacts and potential mitigation measures.

After reviewing six options, the task force recommended a north/south runway on the west side and a west terminal complex. The plan was approved by MAC and sent to the Metropolitan Council and the Minnesota legislature to be considered as part of the "dual track" process.

Metropolitan Planning Commissions, Growth Management Plans

A number of the airports studied by BGR are located in areas with strong regional planning commissions or legal requirements for regional coordination with respect to airport planning.

Minnesota

In 1969 the state legislature created the Metropolitan Council with planning authority over the seven-county metropolitan area for Minneapolis and St. Paul. The Metropolitan Council has 17 members representing each of the 17 council districts in the metropolitan region.

The Metropolitan Council has the following authority with respect to airports:

- to develop a metropolitan development guide that encompasses, among other things, the necessity for and location of airports;
- to adopt a long-range comprehensive policy plan for transportation, airports, and wastewater treatment that conforms to the policies, purposes, and goals of the development guide;

- to review comprehensive airport plans and to suspend indefinitely plans that do not conform to the development guide; and
- to approve certain airport capital projects, including runway construction or extension.

The Metropolitan Council exercised its power to suspend nonconforming airport plans at an early date. In 1969 it rejected as inconsistent with the Metropolitan Development Plan a plan submitted by MAC for the development of a second airport.

Sea-Tac Airport

Sea-Tac Airport in Seattle operates within a strong regional framework. An intergovernmental regional council, the Puget Sound Regional Council (PSRC), has authority over growth and transportation policy within a four-county area. The council is comprised of approximately 475 elected officials who represent four counties, three port districts, 58 cities, and two state agencies. Expansion plans by Sea-Tac Airport require approval of that body.

In connection with its review of the airport's expansion proposal, the PSRC appointed a panel of noise experts to review the plans and the existing situation at the airport. The experts concluded that the Seattle Port had not done everything within reason to minimize noise around the airport and recommended against changing the Metropolitan Transportation Plan to accommodate the expansion. The PSRC's executive council, instead of following the recommendation for rejection, approved incorporating the third runway into the regional master plan with conditions relating to noise mitigation. The PSRC's membership followed suit with an 84 percent vote, weighted by population, in favor of the expansion. The conditions concerning noise mitigation were included in the approved plan.

The Washington Growth Management Act has been successfully invoked to facilitate the airport's expansion plans. The Central Puget Sound Growth Management Hearings Board ordered the City of Des Moines to amend its comprehensive plan to allow runway construction, which had been judged a regional priority and an essential public facility. The city subsequently made changes, which the board determined were inadequate. It indicated that it would seek sanctions if Des Moines failed to comply with its order. Des Moines ultimately amended the comprehensive plan to comply with the order.

NEW ORLEANS AIRPORT: NEEDS, PLANS AND ATTEMPTS TO RESOLVE REGIONAL ISSUES

The New Orleans International Airport is the air carrier airport serving the New Orleans metropolitan area. Its primary service area includes St. James, St. John the Baptist, St. Tammany, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines Parishes. It also serves a large secondary area delineated by airline service at surrounding air carrier airports. See the map of the service area on the following page.

The Airport, which is classified as a medium air traffic hub by the FAA, mostly serves passengers whose travel originates or terminates in New Orleans. It has gone from being the 26th largest airport in the US at the time of deregulation in 1979 to being the 39th today. As of June 1997, passenger airlines serving New Orleans offered an average of 135 daily scheduled nonstop departures to 35 cities. Seventeen passenger airlines and seven all-cargo airlines provide scheduled service. Other airlines provide charter and non-scheduled service.

The Airport, which is owned and operated by the City of New Orleans, is located 12 miles west of downtown New Orleans on approximately 1,600 acres. Most of the land is located in the City of Kenner in Jefferson Parish; a portion of one runway extends into marshes in neighboring St. Charles Parish.

The Airport is governed by the New Orleans Aviation Board. The Aviation Board is empowered to administer, operate, and maintain all airports and aviation facilities owned by the City of New Orleans.

The nine members of the Aviation Board are appointed by the Mayor of New Orleans with the consent of the City Council. By contractual arrangement with Kenner and

St. Charles Parish, the Mayor appoints one representative for each of them. In the case of St. Charles, the Mayor appoints the parish council's nominee. In the case of Kenner, he appoints one of three persons nominated by the Kenner City Council.

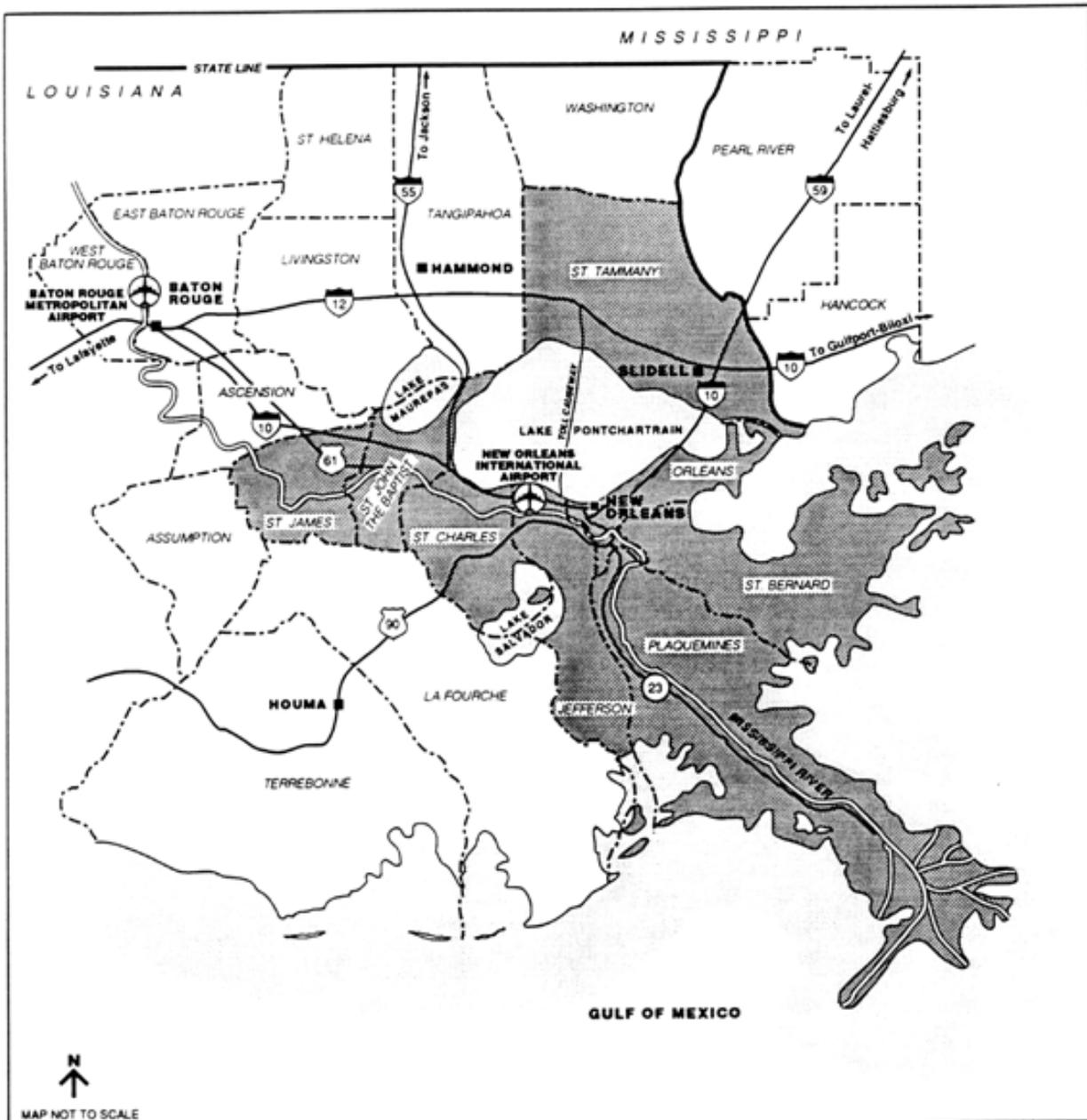
The Airport currently has three runways: one north/south, one east/west, and one on a northeast/southwest diagonal. The third, which is used only for light general aviation aircraft, impedes the efficiency of the other runways by intersecting them. There are eight taxiways.

The Airport, which once had one of the largest land masses for airports in the US, now has one of the smallest for major airports. It faces serious physical restraints on its growth. It is surrounded on the north, south, and east by residential, commercial, and industrial development. It is bounded on the west by the La Branche Wetlands in St. Charles Parish and by two commercial and light industrial areas near Airline Drive. Major thoroughfares, I-10 to the north, US 61 to the south, and Williams Boulevard to the east, also constrain growth. The Airport also faces intense opposition to expansion from near-by residents.

Airport Plans

1990 Strategic Growth Plan

Airport development is currently guided by the 1990 Strategic Growth Plan (Strategic Growth Plan). The plan recommends that certain capital improvements be made when specified planning activity levels (PALs) are



LEGEND

-  Primary service area
-  Parish boundary
-  Major road

Note: The unshaded portion of the figure approximates the secondary area of the airport service region.

AIRPORT SERVICE REGION

New Orleans Air Carrier Airport
Site Selection Study

KPMG Peat Marwick

October 1990

reached. The PALs, which are based on factors such as the number of enplanements and operations, are set forth in the table below.

The airport's Strategic Growth Plan does not indicate when the Airport expects to reach these levels. A contemporaneous report prepared by Peat Marwick in connection with a New Orleans search for an alternate airport site provides some guidance. That report, entitled Final Report Phase I, New Orleans Air Carrier Airport Site Selection (Site Selection Study), contained growth projections beyond the year 2040. The baseline trend forecasts in that report indicated that, based on the number of enplaned passengers, the Strategic Growth Plan's Fourth PAL was expected to occur as early as 2005 and as late as 2020, but most likely in 2013. Recent growth patterns and

more recent forecasts by Leigh Fisher Associates suggest that the Fourth PAL is more likely to occur around 2006.

Thus the Strategic Growth Plan can be viewed as addressing airport conditions now expected to occur in the middle of the next decade. In order to meet the demand expected in that period, the plan calls for a number of significant undertakings. These include the improvement and expansion of terminal facilities, the relocation and expansion of the general aviation area, the expansion of the cargo operations on the south side of the airport, and improvements to and the addition of access and perimeter roads. The most controversial aspects of the plan are the proposed airside improvements. These include the construction of an east/west runway and taxiway and a new, north/south runway and taxiway.

**ANNUAL PLANNING ACTIVITY LEVELS (PALs)
New Orleans International Airport**

	Levels				
	First ^a	Second	Third	Fourth	Fourth ^b airline hub
Activities					
Enplaned passengers	3,300,000	4,000,000	5,000,000	6,000,000	8,000,000
Enplaned cargo (tons)	28,000	40,000	50,000	60,000	60,000
Related aircraft	60	80	80	80	80
Related Variables					
Passenger aircraft departures	53,000	57,000	67,000	75,000	100,000
Cargo aircraft departures	1,600	2,200	2,600	3,100	3,100
Aircraft operations					
Air carrier	100,000	110,000	125,000	135,000	180,000
Air taxi and commuter	28,000	30,000	35,000	45,000	60,000
General Aviation	30,000	38,000	38,000	38,000	38,000
Military	2,000	2,000	2,000	2,000	2,000
Total	160,000	1,800,000	200,000	220,000	280,000

a. Approximates current levels of activity.

b. See text for assumed hub characteristics.

Source: Peat Marwick, July 1988 (Revised July 22, 1988).

The East/West Runway

The Strategic Growth Plan calls for the construction of a 6,800-foot runway parallel to and 700 feet north of the existing east/west runway and a new taxiway to support it. Upon the opening of this runway, the existing diagonal general aviation runway would be downgraded to a taxiway.

The primary purpose of the new runway would be to service general aviation aircraft. The opening of the runway and downgrading of the diagonal runway would simplify operations by eliminating conflicts with the existing north/south and east/west runways. The new runway is expected to increase annual capacity and peak hour visual flight rule capacity, but not instrument flight rule Instrument Flight Rule (IFR) capacity. The new east/west runway would result in all clear zones being located completely on airport property. (Those for the existing diagonal runway extend beyond airport property.)

A new taxiway is being constructed at the location specified for the new runway, and an environmental assessment report for its conversion to a runway has been filed with, and reviewed by, the FAA. The Airport, in response to FAA comments, is now preparing a supplemental filing. NOIA's report indicates that there are no significant impacts associated with the development of the runway and that the airport's post-construction noise contours would actually encompass less land in residential areas east of the Airport. Airport officials state that the project will make east Kenner safer and quieter. The conversion plan has nonetheless generated significant community opposition and is the subject of a "self-imposed moratorium" by the City of New Orleans.

The North/South Runway

The most critical of the proposed improvements in terms of capacity enhancement is the addition of a new north/south runway. This runway, which was included in the NOIA 1980 Master Plan and recommended by the FAA in its 1989 Capacity Enhancement Plan, would allow dual simultaneous IFR operations and increase IFR capacity by 110 percent. The 8,000 foot runway would be built on 375 acres of land, most of which is uninhabited wetlands, in St. Charles Parish. It would take about 10 years to complete.

Two runway alignments are under consideration for the north/south runway. The first is a true parallel, north/south runway. The alternative, a canted runway at the same general location, was developed to eliminate direct overflights from residential areas in the City of Kenner. The canted runway has been extensively studied by the FAA, and the Airport expects final approval of this option upon completion of the environmental impact statement.

The north/south runway faces significant development hurdles. First, it requires the taking of a portion of the La Branche wetlands in St. Charles Parish and the relocation of an active railroad. Second, it requires the development of an expansion program that is acceptable to the airport's neighbors. The proposed project will create new overflights in communities in St. Charles that are not now affected by them and require the acquisition of housing units in two subdivisions in St. Rose, Oakland and Fairfield. Other neighborhoods in St. Charles, including Ama and Destrehan, might also be impacted. Kenner residents fear that the expansion will exacerbate noise in north Kenner.

Land acquisition also poses a challenge. A portion of the land required for the north/south runway was subdivided into small lots in 1972. Although the subdivision was never developed, lots were sold off individually and rights-of-way granted to St. Charles Parish.

Officials in St. Charles Parish have expressed the fear that the new runway might force the James Business Park, a major revenue source for St. Charles Parish, to relocate to Jefferson Parish. They also fear that the runway might disrupt other businesses in the Airline Highway commercial corridor. Any expansion in St. Charles Parish that impacts developed or developable land has a far greater impact than the mere acreage numbers might suggest. According to parish officials, only 15 percent of the land in the parish is inhabitable.

The Aviation Board estimates that the north/south runway will cost approximately 452 million dollars. The city's Comprehensive Capital Facilities Plan 1998-2003, dated March 1998, indicated that the City expects to obtain 75 percent of the funds from the FAA's Airport Improvement Program and the remainder from other sources, such as the State of Louisiana Transportation Infrastructure Model Economic Development (TIME) Program, and passenger facility charges.

Other Improvements

The Strategic Growth Plan assumed the renovation of Concourse C and recommended, among other things, reconstructing Concourse D and developing a two-level terminal structure extending to the west that would add 230,000 square feet of terminal. Since the Strategic Growth Plan was written, Concourses C and D have been reconstructed and the customs area has been redeveloped.

The Strategic Growth Plan also proposed improvements relating to the general aviation facilities, additional air cargo facilities, ground transportation, long-term airport land use, and off-airport development. The proposed improvements include moving general aviation facilities to the north of the Airport, redeveloping and expanding air cargo facilities on the south side of the Airport, redeveloping and expanding passenger terminal and nonpassenger terminal access roads, and developing new perimeter/security roads.

The Airport has undertaken a number of the proposed improvements. It has built a new 75,000-square-foot cargo facility, which is leased to Federal Express, and has performed work on the north side general aviation area. Work is in process on the perimeter roads.

Another plan on the drawing board is the development of the South Kenner Intermodal Cargo Terminal on land acquired by the Airport as part of its residential buy-out program. The proposed project consists of a wharf area and an access road and rail spur to transport international trade items approximately 1.2 miles from a South Kenner cargo complex on the Mississippi River to NOIA. The project's future is in doubt after a recent study concluding that there is no demand for a cargo wharf on the river.

Although current controversies relate to the runways, the other proposed improvements need to be borne in mind as regional relations are discussed. The implementation of many of these improvements will require action by, and the cooperation of, other governmental agencies, including the City of Kenner, the Parishes of Jefferson and St. Charles, and the State of Louisiana. Some will require the acquisition of additional lands and rights of way.

The following land acquisitions are necessary to implement the plans set forth in the Strategic Growth Plan to meet needs through the Fourth PAL: 45.9 acres for the east/west runway and taxiway, 6.9 acres for a Loyola Drive access to a relocated general aviation area, 103.3 acres for the south side air cargo redevelopment, and 374.2 acres for the proposed north/south runway. Long-term development for the periods beyond the given PAL levels is projected to require a minimum of 138 additional acres.

Longer-Term Development Plans

The improvements described above are those that are considered necessary or desirable to accommodate demand levels at the Strategic Growth Plan's Fourth PAL (six million passengers and 220,000 operations), expected to be reached in the middle of the next decade.

A question arises as to how NOIA will handle growth in airport capacity in the more distant future. According to the Site Selection Study's expanded airline activity predictions, NOIA could have 12,000,000 enplanements and 312,000 aircraft operations by 2020 and 18,000,000 enplanements and 395,000 operations by 2040. A more recent Leigh Fisher study estimates almost 352,000 operations by 2016.

Both the Site Selection Study and the Strategic Growth Plan contain conceptual scenarios to meet longer-term needs at the existing site. We are including a description of these scenarios because they are illustrative of the issues which will require intergovernmental cooperation in the future.

The Strategic Growth Plan includes "Intermediate" and "Ultimate" Development Scenarios, projecting airport needs beyond the year 2000. The intermediate conceptual development plan, like the short-term one,

allows for the expansion of existing terminal facilities in the same basic configuration. Like that plan, it moves all general aviation facilities to the north of the runway, allowing growth of air cargo facilities on the south, and calls for the improvement of an access route along Aberdeen Street and improvements of 23rd Street. The intermediate plan assumes that all development will be to the north of the Illinois Central Gulf (ICG) railroad tracks and that the railroad will pass under the proposed north/south runway. It also assumes the development of certain roads, including a new state route from I-10 to Airline Drive between the limited access road and Williams Boulevard and the proposed north/south Kenner roadway with a tunnel under the existing east/west runway.

The conceptual plan named "Ultimate Development on the South Side (Railroad not Relocated)" calls for keeping the terminal where it is and developing a new southern entrance to the airport. The "Ultimate Development on the South Side (Railroad Relocated)" calls for both the relocation of the terminal and the relocation of the ICG Railroad around the proposed north/south runway. Both South Side plans call for placing general aviation to the north and air cargo to the south and assume significant road construction. "Ultimate Development on the North Side" includes moving the entire terminal complex, the main entrance and center of activity, to the north of the airport's property. It proposes the construction of a number of roads and the development of the land between I-10 and the Airport for hotel/business use and for airport functions such as airline support, car rental, and parking. This plan, unlike the short-term, intermediate, and two South Side plans, reverses the proposed location of air cargo and general aviation. It would require a massive replacement of facilities.

All of the long-term plans would require the support of the local community and political entities. They involve extensive property acquisitions and, in the case of the North Side plan, massive relocation of homes and businesses.

The Site Selection Study sets forth far grander plans to accommodate long-term demand through the level it designates as its fourth planning activity level (18,000,000 enplaned passengers and 395,000 operations). These plans were designed to provide at NOIA facilities similar to those considered for the alternate sites in the study. One option would involve a north/south configuration of three parallel air carrier runways. The second would involve an east/west configuration.

It was estimated that the east/west alignment would cost 1.9 billion dollars and that the north/south one would cost 1.7 billion dollars. The report noted that the north/south runway would require extensive development in the La Branche Wetlands, the relocation of the ICG railroad line, and the realignment of the proposed hurricane protection levee. Development of the east/west alignment would require extensive acquisition and relocation of businesses and residences, as well as the realignment of Airline Drive and Jefferson Highway. The east/west configuration would also require relocation of the ICG and the Kansas City Southern Railroad tracks.

A History of Regional Issues

Community Relations

In many respects the story of New Orleans International Airport mirrors that of urban airports all over the United States. When New Orleans acquired the land for the Airport in the early 1940s, it was

surrounded by undeveloped swamp. The town of Kenner, which in 1950 had 5,535 residents, now has more than 73,000.

As air traffic increased and jets replaced prop planes, and as both the airport and Kenner grew, tensions between the Airport and its neighbors increased. Relations took a turn for the worse in 1982 when a Pan Am flight crashed in the residential area to the east of the Airport, killing everyone on board and eight people on the ground.

In 1980, a number of Kenner families brought suit, alleging that the Airport had caused their property values to decline. After the Pan Am crash, additional families joined the action. The suit was settled in 1989 with the Airport agreeing, among other things, to seek federal money for a noise compatibility program.

The Airport's Noise Compatibility Program

In 1985, the Aviation Board commissioned a Federal Aviation Regulations Part 150 Program as a step toward resolving long-standing noise issues. The objective was to develop a plan and program that would efficiently accommodate the long-range aviation demand of the region and at the same time ensure long-term compatibility between the Airport and the surrounding community.

A Part 150 Program consists of two parts: airport noise exposure maps and a noise compatibility program. The maps record the existing and forecast noise exposure areas and levels around an airport. The program includes recommendations to lessen the extent and effects of aircraft noise on the land and residents in the airport environs and describes ways to develop an ongoing implementation process.

The noise compatibility program must be approved by the FAA as a prerequisite to obtaining FAA funding for noise abatement or mitigation programs.

The NOIA's study contained noise exposure data for base year 1985, 1991, and 2006. The map for 1991 was required by the FAA; the one for 2006 was prepared to assess the probable effects of proposed airfield improvements (extension of the existing east/west runway into St. Charles Parish and the construction of a new parallel north/south runway).

The Noise Compatibility Program contained both noise abatement and noise mitigation measures. Noise abatement measures are actions that can be taken to reduce the extent of aircraft noise exposure. Noise mitigation measures are of two types: remedial and preventive. Remedial measures help to ameliorate the effects of noise on the people who still live in high noise areas even after implementation of the noise abatement measures. Preventive measures are used to reduce the development of new incompatible land uses in the airport vicinity.

The Part 150 report recommended eight noise abatement measures. The primary recommendation was the continuation of a preferential runway use program that had been established by the FAA in 1986. Under this program, when weather and traffic permit, the air traffic controllers direct pilots to use runways that minimize flying over populated areas. In addition pilots are directed to maintain specific headings and reach specific altitudes before making any turns after departing, in effect directing them not to turn until they are over Lake Pontchartrain.

The report also noted that there had been many complaints about aircraft not adhering to the heading and altitude directions. The report attributed the drifting to strong

winds and recommended that a test be conducted to determine whether better course guidance could be provided.

The report recommended a number of remedial noise mitigation measures including the buy-out of properties in areas exposed to the highest level of noise. For less severely affected areas, it recommended that residents be offered a variety of mitigation programs such as soundproofing, property transaction assistance, and aviation easements.

The report recommended a number of preventive measures that required implementation by the City of Kenner and the Parishes of Jefferson and St. Charles. Basically, the report called on those jurisdictions to recognize the noise effects of the Airport in their land use planning and to minimize the opportunities to develop incompatible land uses in noise-impacted areas in the future. Among other things, it called for overlay zoning for land use compatibility with the Airport and for the implementation of building code and subdivision criteria.

The implementation of the program spoke volumes about the problems that arise when the ownership of the airport is divorced from the governing authority in the region. The Kenner City Council, for example, approved the noise compatibility program "as modified by the City Council FAR Part 150 Review Committee." That committee's recommendations seriously qualified Kenner's acceptance of responsibility for the preventive mitigation procedures that required action by the local governing body.

Interestingly, the issues which caused the greatest controversy in the preparation of the Part 150 study—overflights and deviations from flight patterns in north Kenner—still fester today. In addition, the implementation of the airport buy-out and sound insulation programs have spawned complaints and law suits.

The Airport's Buy-Out Program

Residents have had a number of complaints about the NOIA's buy-out program. One complaint is that the program, which purchases buildings within the lines of the computer-generated noise contours, has butchered neighborhoods, leaving homes standing across from vacant lots that were once neighbors' houses. A suggestion has been made to expand the buy-out program to include buildings that are located in the same neighborhood but are not eligible for purchase with FAA funds.

The Airport has also been criticized for boarding up and abandoning purchased homes, rather than demolishing them in a timely fashion. In implementing its buy-out program, the Airport would wait until all the homes in a targeted area were purchased before proceeding with demolition. Residents complained that the failure to demolish abandoned buildings as purchased exposed the remaining neighbors to vagrants, increased crime, and lower property values. The program was later changed to take the criticism into account.

Disputes also broke out over the valuation. Property owners in the runway protection zone, who were forced to sell, rejected the price offered them for their properties. The City of Kenner, which had approved expropriation of the properties, joined the residents in the fight over value. Most recently, the airport's soundproofing program came to a halt as a result of a price dispute between the Airport and the architects it had chosen to implement the program.

East/West Runway Extension

In the early 1980s the Aviation Board sought to expand the existing east/west runway into St. Charles Parish to accommodate larger aircraft. The expansion was designed to enhance the safety of fully

loaded craft departing on long-haul flights, particularly in the summer heat, and to reduce some of the aircraft noise over residential areas to the east of the Airport.

After several years of delay, Kenner, New Orleans, and St. Charles Parish entered into an agreement that allowed the Aviation Board to undertake the expansion. St. Charles Parish, in return for allowing the extension into its boundaries, became entitled to 15.5 percent of the taxes collected by Kenner from sales at the Airport and \$300,000 in mitigation of damages to the La Branche wetlands. (The 15.5 percent approximated the ratio of airport land located in St. Charles Parish to total airport land.) The Aviation Board agreed to allow certain inspections and reviews of the runway construction and to obtain certain approvals before operating the facility. St. Charles Parish agreed to give the necessary approvals for the extension.

Kenner, for its part, got a quieter community, since the runway extension redirected many planes away from Kenner residences into sparsely populated wetlands. It also received rights-of-way for a north/south road through the Airport at the Jefferson/St. Charles Parish border.

In addition, the agreement increased the voice of St. Charles Parish and Kenner in the appointment of their representatives to the Aviation Board. Under the new procedures, the Mayor of New Orleans appoints the nominee of the St. Charles Parish Council and one of three persons nominated by the Kenner City Council.

Proposed East/West and North/South Runways

To date, the most controversial projects proposed by the Airport are the proposed conversion of a new east/west taxiway into a runway and the construction of a

north/south parallel runway. The prospect of these projects becoming reality has prompted Kenner and St. Charles Parish to become more aggressive in their regulatory stances.

In 1991, after the Aviation Board commenced construction of a new east/west taxiway that is convertible into a runway, Kenner sued to halt construction, claiming ownership of “paper streets” on airport property. In 1994 Mayor Marc Morial and then Kenner Mayor Aaron Broussard settled the lawsuit and resolved a series of long-standing issues, opening the way for the construction of the taxiway and development of a new general aviation area. In the settlement, Kenner gave the Airport title to 124 acres of paper streets, and New Orleans gave Kenner title to 16 pieces of property that it was leasing to Kenner.

In 1996 Kenner enacted a moratorium on airport construction, pending the development of zoning measures that would encompass the Airport. In December 1997 Kenner amended its zoning laws to specifically include airport property. The amendment rezoned the airport land as an “aviation heavy industrial district” and required the Aviation Board to obtain a conditional use permit for any construction project at the Airport. The amendment amounted to an assertion by Kenner of veto power over airport growth. Although New Orleans claimed that the action was illegal, it did not file suit.

In December 1997 the Mayor of New Orleans announced that the City of New Orleans would not seek Kenner building permits for the controversial conversion until after a summit meeting between the Mayors. Although Mayor Morial characterized this position as a “self-imposed moratorium,” the practical impact was

unclear, since the Airport ordinarily would not seek a permit until after a project had received FAA approval. To date the moratorium has not been lifted, and the FAA has not approved the project.

In early 1998 a Kenner City Councilman suggested that Kenner should look into taxing the Airport. Kenner has not taken any action on that proposal.

In August 1998 St. Charles Parish approved a moratorium on airport-related construction in St. Charles Parish. The moratorium, which was put in place pending the development of a zoning classification for airport-related sites, is designed to give St. Charles Parish more leverage in negotiations with NOIA over the proposed north/south runway.

The Kenner City Council recently adopted a resolution to seek a second place on the NOIA Board. St. Charles Parish officials have also expressed interest in a second seat.

In addition to the major construction issues, there are a number of airport-related matters which cause friction between New Orleans and Kenner. These include a dispute over taxicab rights and restrictions. New Orleans taxicabs are allowed to pick up fares at the Airport, but not in other parts of Kenner. Kenner cabs, however, are not allowed to pick up calls for service anywhere in New Orleans. Other problems include unhappiness with the airport’s Noise Compatibility Program and a dispute over whether the Kenner police have the right to go on airport property to investigate incidents.

Attempts to Resolve Regional Issues

A number of attempts have been made to address the difficulties posed by the airport's geopolitical straitjacket. On several occasions a state take-over of the Airport has been discussed. On others, alternate sites have been considered. Most recently, joint discussions of various governing bodies have been held.

State Take-Over

The City and the State have on a number of occasions discussed a transfer of the Airport to the State through a sale or asset swap. In 1985, Mayor Dutch Morial proposed selling the Airport to the State for replacement/fair market value. At that time Mayor Morial stated that “[t]he airport has to expand for operational purposes into areas beyond the jurisdiction of Orleans Parish and such an expansion would be greatly facilitated by the state’s power of expropriation.”

The issue resurfaced in 1989 when Mayor Barthelemy, responding to Governor Roemer’s attempt to condition TIME money, asked the State if it would be willing to buy the Airport. Discussions occurred several times during the Barthelemy administration. In early negotiations the State made, and the City rejected, an offer to buy the Airport for 50 million dollars. Later the State put forth a more complicated proposal that involved a series of swaps and deals, including the transfer to a regional transportation authority of a number of facilities, including the Airport, the Union Passenger Terminal, the Public Belt Railway, and the Lakefront Airport. The City, in return for the transferred assets, would have received cash and possibly other concessions. These included permission to operate and share in revenues of a gambling casino, sole ownership of the Rivergate, a share of state lottery proceeds, state financing of the parish judicial system,

reinstatement of the city’s share of state tobacco tax revenues, and state maintenance of state roads within the City. Newspaper reports indicated that the State was offering 150 million dollars in cash and the City was asking for 400 million dollars.

Legislation passed in June 1991 allocated proceeds of the four-cent sales tax collected by the State at the Airport to the purchase or lease-purchase of the Airport by the State. The City was to receive at least five million dollars a year from the tax.

Arguments over the method of valuation ensued. Using replacement value, the City placed the airport’s value at 1.5 billion dollars. The State responded that the value was overblown, since it failed to take into account the lack of a market for the facility, as well as its deteriorating condition. The State also made the point that the asset was not revenue-producing. Mayor Barthelemy responded that this fact was irrelevant, comparing the proposal to taking someone’s non-revenue-producing house for nothing.

Proponents of a transfer argued that the State, the federal government, and the airlines, not the City, fund the airport. They pointed out that the City lacked the means to fund a new airport and that even the funds for the recent expansion had been provided by the State. They also pointed out that the State can expropriate land, while the City cannot do so outside of its boundaries.

Negotiations eventually ended in bitter recriminations, with Mayor Barthelemy asserting that the Airport was worth at least 1.5 billion dollars and that the State was trying to steal it.

Interestingly, disputes over valuation have been rendered largely moot by recent FAA interpretations of the revenue diversion rules applicable to the Airport. See Revenue Diversion at page 65.

The Question of a New Airport

For years debate has taken place over the desirability and feasibility of a new airport to replace NOIA. Two different sets of studies were undertaken: one by the Aviation Board, focusing on the needs of the New Orleans metropolitan area and one by the Louisiana Airport Authority, focusing on the needs of southeastern Louisiana. The quests were textbook studies of regional noncooperation and contributed to delays in expanding NOIA.

In 1989 the City of New Orleans hired KPMG Peat Marwick to prepare the “New Orleans Air Carrier Site Selection Study.” The study identified 17 potential sites, four of which were selected for further study. These sites, together with NOIA and two other sites identified by the Aviation Board, were studied in greater detail. In 1992 the Aviation Board cut these sites down to three: one near Bayou Sauvage in eastern New Orleans, one in St. Tammany Parish near Slidell, and the existing airport site. The Aviation Board in December 1993 chose the eastern New Orleans site for further consideration, retaining the option of expanding the existing site. The Aviation Board authorized an additional site study, but it was never done.

Mayor Marc Morial, upon assuming office, abandoned the previous administration’s push for a new airport. He indicated that, while a new airport might be the long-term solution, the focus for the near-term would be on expanding the existing one.

In 1992 the State created the Louisiana Airport Authority to study the feasibility of establishing a new airport between New Orleans and Baton Rouge. The area of the Authority includes Ascension, Assumption, East Baton Rouge, Jefferson, Livingston, Orleans, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, and Tangipahoa Parishes.

The authority is governed by a 20-member board. Jefferson and Orleans Parish each have two members; the other parishes in the authority’s territory have one. The parish representatives are appointed by the governor from names submitted by the parish legislative representatives. In addition, six members are appointed at large by the governor.

In 1993 the Louisiana Airport Authority commissioned a study on the financial feasibility of a 25,000-acre, regional airport-transportation center between Baton Rouge and New Orleans. The report concluded that the project was financially feasible and placed the cost at 2.35 billion dollars, with 1.07 billion dollars needed for the first phase. The report estimated that approximately 16 percent of the cost of the first phase would come from federal grants and 900 million dollars from passenger facility charges.

The plan identified four possible sites and called for the downgrading of the Baton Rouge and New Orleans airports to relievers. Although the Louisiana Airport Authority announced that it would undertake a site study, such a study was never done. In response to additional requests to fund studies, the FAA indicated that it would not grant more money for studies in southeastern Louisiana until the Aviation Board and the State coordinated their efforts. The Louisiana Airport Authority has announced another study.

Joint Meetings

In December 1997 and January 1998 the New Orleans City Council held joint meetings with the Kenner City Council and the St. Charles Parish Council to open dialogue with respect to the Airport. A joint committee with three representatives from each of the councils was formed to continue discussions. The committee held its first meeting on September 24, 1998. Jefferson Parish was excluded from participation in this committee at the insistence of St. Charles Parish.

Mayor Morial invited government officials of St. Charles and Kenner to a “summit” meeting on airport issues in October 1998. The Mayor of Kenner attended part of the meeting. The President of St. Charles declined to attend, although he invited Mayor Morial to meet with him in St. Charles to discuss the issues.

NEW ORLEANS AIRPORT: LEGAL AND REGULATORY FRAMEWORK

Understanding the regional issues associated with the Airport and the viability of the various options requires some familiarity with the legal and regulatory framework in which the Airport operates. Relevant legal issues include revenue diversion rules and the interplay of home rule power with the law of eminent domain and zoning.

Revenue Diversion

In the early 1990s the City and State entered into discussions about the sale of the Airport. Negotiations broke down in a heated exchange over sales price.

Interestingly, current interpretations of federal law call into question the city's ability to receive compensation on the transfer of the Airport. The FAA generally considers proceeds from such transfers, whether in the form of lease payments or purchase price, to be airport-generated revenues subject to the FAA's revenue diversion rules. As such, the revenues cannot be used for general municipal purposes. Instead, they must be reinvested in the airport. There is a limited exception for the recovery and retention of unrecouped capital contributions and unreimbursed operating expenses made or incurred by an airport owner or operator within the preceding six years.

New Orleans, as a recipient of federal assistance and a signatory of grant assurances, is obligated to comply with the revenue diversion rules. The FAA takes the position that such obligations run indefinitely and cannot be abrogated, even by repayment of all development grant moneys.

The revenue diversion rules were first mandated by the Airport and Airways Improvements Act of 1982. That act required all public agencies receiving federal grants for airport development after September 3, 1982 to comply with revenue retention requirements. Under these requirements, as amended, all revenues generated by an airport must be used for capital and operating costs of the airport, the local airport system, or certain transportation facilities directly and substantially related to air transportation. Certain revenue diversions, pursuant to agreements and statutory provisions predating the Act, are grandfathered.

The rationale behind the revenue retention requirement is that federal grants should supplement airport-generated funds. They should not provide an opportunity to free such funds for general governmental purposes.

The revenue diversion requirements have been tightened over the years through a series of amendments. The Airport and Airway Safety and Capacity Expansion Act of 1987 narrowed the permissible uses of airport revenues and added local taxes on aviation fuel to the restricted revenues. The FAA Authorization Act of 1994 required that airports be as self-sustaining as possible, tightened enforcement, and set forth four specific prohibited forms of revenue diversion. It also prohibited political subdivisions from collecting certain new taxes, fees, and charges at airport sites, unless they were utilized exclusively for airport or aeronautical purposes. The FAA Reauthorization Act of 1996 expanded the universe of airports subject to the revenue diversion rules and imposed a six-year statute of limitations on

claims by owners and operators for reimbursement of capital contributions and past expenditures for operating expenses.

In 1996 the FAA issued a draft policy statement on revenue uses at airports. In the same week that the draft policy statement was issued, the Government Accounting Office testified that the FAA's position on revenue diversion undermined the incentive to privatize airports. Later that year Congress enacted a pilot privatization program that specifically authorized the FAA to exempt up to five airports from statutory and regulatory requirements governing the use of airport revenues. The provision permits the Department of Transportation to allow the owners of air carrier airports participating in the program to recover the proceeds from the lease (but not sale) of airports to private entities, in an amount approved by 65 percent of the air carriers serving the airport and by air carriers with 65 percent of the landed weight at the airport.

The final policy statement was issued on February 16, 1999. It defines "airport revenues" to include revenues received from the sale, transfer, or disposition of real or personal airport property not acquired with federal assistance, or any interest in such property, including sale through a condemnation proceeding. (The disposition of land donated by the U.S. or acquired with federal funds is covered by a different set of requirements. Under current law, when such property is sold and no longer used for its originally intended purpose, the federal government can seek reimbursement for its share of assets acquired through the grant, while surplus government property automatically reverts to the federal government. The FAA has not sought reimbursement when airport ownership has been transferred between public entities, in part because the airport is still used for its originally intended purposes.)

Unlawful revenue diversion is defined as "the use of airport revenues for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property," other than grandfathered uses. It does not include the repayment of unrecouped capital contributions and operating costs made or incurred by the airport owner or operator in the preceding six years.

The final policy statement addresses sales or leases of entire airports in two sections focusing on privatizations. It notes that FAA approval is required for any sale or lease of an airport, including a transaction between government entities. It further notes that in processing an application for approval the FAA will (a) treat proceeds from the sale or lease of an airport as airport revenues, (b) condition the approval of the transfer on the parties' assurances that the proceeds of sale will be used for purposes permitted under the statutes imposing revenue-use requirements, and (c) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport.

The FAA acknowledged the difficulties that would be encountered in applying the revenue diversion rules in a sales context. In the draft report it noted that while a public entity selling an airport could not simply retain all proceeds for general use, it might be inappropriate to simply return the proceeds to the private buyer to use for operation of the airport. In the final report, it noted that "when the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport."

The final policy states that the provisions for ensuring compliance with the statutory revenue-use requirements might have to be adapted to the special circumstances of a transaction. It does not provide specific guidance as to the form that such an adjustment might take. “In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.” Each sale or lease of an airport will be considered on a case-by-case basis.

Zoning and Eminent Domain

Ultimately, the airport’s expansion depends upon the exercise, in its favor, of two powers: zoning and eminent domain. The following is a brief description of expropriation and zoning powers as they relate to airports in Louisiana.

We qualify our conclusions in this section with the observation that many of the issues that would be raised by expropriations to transfer or expand NOIA or in zoning battles over airport expansion have not been directly addressed by the courts and that existing case law is not as clear and consistent as one might hope. Judicial interpretations in these areas reflect a certain degree of turmoil, with reversals, explanations, and distinctions that are not always reconcilable. Accordingly, while we have attempted to produce a rational, objective analysis of the subject, the matters addressed are subject to different interpretations and would undoubtedly be the subject of much litigation.

Zoning

Perhaps the greatest obstacle facing NOIA in its expansion efforts is the potential for Kenner or St. Charles to block expansion through local zoning ordinances. The Louisiana Constitution confers great power in this realm to home rule entities.

Louisiana is one of the few states that specifically grant zoning power to local governmental subdivisions in the state constitution. This specific grant of home rule authority is to be interpreted broadly to preserve it from undue encroachment by the State. Courts carefully scrutinize claimed exceptions.

In *City of New Orleans v. Board of Commissioners of the Orleans Levee District (OLD)*, the Supreme Court addressed the applicability of local zoning regulations adopted by home rule entities to the State and its political subdivisions. In that case the City of New Orleans sought a declaration that the construction by the Orleans Levee District of a marina on state land in New Orleans violated the City’s Zoning Ordinance and an injunction to restrain the violation. The Orleans Levee District argued that, as a state entity, it was not required to abide by the city’s ordinances.

The Court discussed in great detail the interplay of constitutional provisions granting home rule powers to cities and reserving the state’s police power. It distinguished between two classes of home rule governments and the scope of the autonomy granted them. Home rule governments that pre-dated the 1974 Constitution (pre-existing home rule governments), like the Cities of New Orleans and Kenner, have the greatest power to initiate legislation. Such governments retain all powers, functions, and duties in effect when the Constitution was adopted; and, if their charters permit, they have the right to all

powers and functions granted to other local government subdivisions. Unless a legislative act exceeds some constitutional limit on initiation, the state legislature cannot control, restrain, or override a pre-existing home rule government's valid exercise of the power of initiation. Home rule governments established after the 1974 constitution (post-1974 home rule governments), have more limited powers. Such governments are authorized to adopt charters providing for the exercise of any power "necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution."

The Supreme Court held for the City, finding that its home rule powers included the power to initiate zoning ordinances within the city and immunity from the state legislature's authority to withdraw, preempt, or deny the city's power to initiate ordinances. It also held that the city's initiation of building and zoning ordinances for the purposes alleged did not constitute an abridgment of the state's police power.

The Court indicated that to support a claim that the city's zoning ordinance abridged the state's police power, the Orleans Levee District would have to show that the ordinance conflicted with a state statute necessary to protect the vital interests of the State as a whole. To establish the conflict, the Orleans Levee District would have to show that the state statute and the ordinance were incompatible and could not be effectuated in harmony. Furthermore, to show that the state statute is necessary, the Orleans Levee District would have to demonstrate that the state interest could not be protected through alternative means significantly less detrimental to home rule powers and rights.

The Court remanded the case, affording the Orleans Levee District the opportunity to urge any good faith defense, including

demonstration (based on facts not before the court) that the City had exercised its home rule powers in a way that abridged the police power, as interpreted above, or that it had exercised its zoning power "in an unreasonable, oppressive, arbitrary, or discriminatory manner."

In a later case, *St. Charles Gaming Company, Inc. v. The Riverboat Gaming Commission (St. Charles Gaming)*, the Louisiana Supreme Court considered a St. Charles Parish zoning ordinance restricting riverboat gaming activity in the parish to bature locations to be designated by subsequent ordinances. The issue was whether the ordinance violated state constitutional and statutory provisions on gaming.

The Court observed that the Louisiana Constitution gives post-1974 home rule governments (of which St. Charles Parish is one) immunity when exercising within their boundaries powers that are consistent with the Constitution and not denied by general law. Such a general law must deny, not merely conflict with, the local law. The Court held that the state's gambling law did not deny any home rule government the power to enact and enforce constitutional and nonarbitrary zoning ordinances. "In our opinion, the Riverboat Gaming Act does not purport to prevent localities from confining legal gaming activities to reasonable and fair zones in accord with the surrounding uses of property and comprehensive zoning ordinances...." The *St. Charles Gaming* court did not decide whether zoning could be used to prohibit an activity permitted by or regulated under state law.

The Court gave the St. Charles Gaming Company an opportunity to show that St. Charles Parish acted arbitrarily in rezoning or denying rezoning for purposes of gaming. Whether the local government's action was arbitrary, unreasonable, or discriminatory

was to be considered in terms of the prevailing uses of property and the comprehensive plan.

The City of Kenner has a home rule charter that pre-dates the 1974 Constitution. Thus, the interpretive principles set forth in *OLD* would apply to zoning disputes with it over the Airport. The city's zoning could be overruled only if it were shown to conflict with the state's police power under the difficult standards set forth in that case or if it were shown to be capricious or arbitrary, either by its terms or in its application.

NOIA could fare better than the Orleans Levee District under the "vital interest" test used by the *OLD* court to determine whether the local zoning ordinance abridged the state's police power. The court in *OLD* observed that the activity at issue—the building of a marina—did not involve the Orleans Levee District's primary functions of levee protection. It left open the possibility that ordinances interfering with the levee system would be treated differently, presumably because of the greater state interest in the activity. Similarly, the critical role of airport infrastructure could provide support for overruling local zoning ordinances that interfered with needed airport development.

Because St. Charles Parish is a post-1974 home rule government, the principles set forth with respect to post-1974 home rule governments in *OLD* and *St. Charles Gaming* would govern disputes over airport zoning. While the latter case suggests that the zoning powers of such a home rule entity could be overridden by a general law, it did not address whether the enactment of a general law denying zoning power would be unconstitutional as conflicting with the specific grant of zoning power in Article VI, Section 17 of the Louisiana Constitution. Because of this possibility, post-1974 home rule

governments might be in the same position as pre-1974 ones insofar as zoning matters are concerned—subject only to the "vital interest" test and general limitations on capricious and arbitrary actions.

Eminent Domain

Eminent domain, the power of the sovereign to take property for public use without the owner's consent, is considered inherent in state government. The power can be, and has been, delegated to various other entities.

The state's power of eminent domain is limited by Article I, Section 4 of the Louisiana Constitution. That section, which addresses the expropriation of private property, limits the power of expropriation by providing that "[p]roperty shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit." Expansion of a publicly owned airport qualifies as a public purpose.

Article VI, Section 23 of the Constitution grants the power of eminent domain to political subdivisions. That section provides that "[s]ubject to and not inconsistent with this constitution and subject to restrictions provided by general law, political subdivisions may acquire property for any public purpose by purchase, donation, expropriation, exchange, or otherwise." The power can also be delegated by legislative act to others, including public and private corporations. Expropriation laws, including the statutes delegating expropriation power, are strictly construed.

Because the law distinguishes between the taking of private property and the taking of property that is already in public use, we deal with those types of takings separately.

EXPROPRIATION OF PRIVATE PROPERTY By the State

The State of Louisiana has the power of eminent domain and can exercise it to acquire land for a public purpose, including the construction or expansion of an airport owned or operated by it. Thus, if the State owned NOIA, it would be able to acquire private property to facilitate its expansion.

It is unclear whether the State could exercise the power of eminent domain to acquire property for the benefit of the Airport while it is owned by New Orleans. The exercise of such power for the benefit of New Orleans might be considered an impermissible end-run around statutory restrictions on the exercise of the power of eminent domain by New Orleans.

By the City of New Orleans

The general rule is that the powers of a municipal corporation cease at its boundaries and cannot be exercised beyond its boundaries unless the power to do so has been expressly conferred upon it by the legislature. Thus, whether New Orleans can exercise the power of eminent domain for the Airport depends on whether the legislature has conferred extraterritorial power on the City.

A separate part of the title on aviation addresses New Orleans' powers with respect to NOIA. LSA-R.S. 2:351 authorizes the City of New Orleans to "acquire and construct improvements and betterments and extensions of" NOIA and "to acquire by purchase, lease, contract, or exchange, such lands, easements or other property or rights in property located within or without the City of New Orleans, as may be necessary or convenient for the acquisition and construction of such improvements, betterments and extensions." The section does not specifically authorize NOIA to acquire property by expropriation.

A question arises as to whether New Orleans has the power under the general provisions addressing the powers of municipalities with respect to airports. LSA-R.S. 2:131 allows cities, towns, and parishes to acquire, maintain, and operate airports within or without their boundaries, subject to a geographic restriction applicable to parishes but not municipalities. Section 2:133 allows cities, towns, or other political subdivisions to acquire private property for an airport or airport expansion by grant, purchase, or lease, if it is able to agree with the owner on terms, otherwise by expropriation.

Section 2:133, taken with the extraterritorial powers granted in Section 2:131, might be interpreted as allowing a municipality acting unilaterally to expropriate property outside its boundaries. The provision is limited, however, by other statutory provisions. Section 2:140 states that all provisions relating to expropriation for airports are to be construed in accordance with general provisions of law governing the right and procedure of municipalities and other political subdivisions to expropriate property. Among these provisions is one authorizing expropriation by a municipality for any authorized purpose. The expropriation right is qualified by a proviso that the statute is not to be construed as authorizing a parish or municipality to expropriate property in any other parish without the consent of the police jury of the parish in which the property is situated. Thus, the right of municipalities and parishes to expropriate property outside their borders for airport purposes would appear to be limited by the consent requirement.

Do the specific provisions on NOIA, which do not grant extraterritorial expropriation power, negate the general grant to municipalities; or does the general grant of expropriation powers to municipalities supplement the city's acquisition powers?

Under the more restrictive interpretation, New Orleans would lack the power to expropriate for NOIA, even with the consent of the appropriate governmental body. Under the least restrictive, the consent of another governmental body would be required.

There does not appear to be any constitutional provision which would prevent the legislature, should it so choose, from expressly authorizing New Orleans to expropriate private property in Kenner or St. Charles for airport use. The acquisition would not negate any power of the home rule jurisdiction, since such jurisdiction's parallel powers of expropriation remain intact. Nor would the expropriation interfere with the power of the home rule jurisdiction to control land use, since the expropriating entity would still be required to comply with applicable zoning laws. Furthermore, in the case of St. Charles, the home rule powers are subject to limitation by general laws enacted by the legislature.

By Other Entities

A number of statutory provisions address the exercise of the power of eminent domain for airport purposes by special districts and authorities. With the possible exception of the Louisiana Airport Authority, these statutes indicate a fairly consistent legislative approach to expropriation. The approach respects and protects the views and powers of the local governmental subdivision in which the property is located.

Airport districts cannot expropriate property outside their boundaries. The consent of the municipality or political subdivision in which property is located is required for expropriation within the district. Similar limitations on the exercise of the power of eminent domain apply to the airport authority operated by St. James and Ascension Parishes. The exercise of the

power of eminent domain by that authority is limited to the area within the authority's boundaries, and the consent of the governing authority of any affected municipality or parish is required. The power of eminent domain is not specifically mentioned in the statute governing airport authorities established by individual parishes.

The Louisiana Airport Authority, on the other hand, has broad authorization to expropriate property or interests therein within or without the territorial boundaries of the authority for the construction or efficient operation of any airport "under its jurisdiction." The expropriation is to be made pursuant to the procedure provided through the expropriation laws of the State.

It has been suggested that the Louisiana Airport Authority could expropriate property for NOIA. Given that grants of expropriation power are to be construed against the expropriating entity, this is a dubious proposition. NOIA would not appear to be "under the jurisdiction" of the Louisiana Airport Authority while it is owned and operated by the City of New Orleans. Section 2:653, which stipulates that the authority cannot intervene in the administration or operation of any existing airport facility located within or without the district, excludes such airports from the authority's jurisdiction.

The legislature could expressly delegate expropriation power to a regional authority established to acquire NOIA.

EXPROPRIATION OF PUBLIC PROPERTY

A different set of rules applies to the expropriation of property which is already devoted to a public use. The guiding principles governing the expropriation of such property were set forth in *State of Louisiana vs. Ouachita Parish School Board (Ouachita)*. The issue in that case was whether the Department of Highways, a

state agency, could expropriate a school owned by a school board that also had power of expropriation.

The Court stated in *Ouachita*:

In determining whether property already devoted to a public use can be subjected to expropriation, the factor to be considered is the character of the condemnor. If the sovereign on its own behalf seeks to acquire such property by eminent domain, the fact that the land sought to be taken is public property generally is immaterial.... If, on the other hand, the sovereign has delegated the power of expropriation to one of its subdivisions or agencies, the rule is that the agency or department cannot expropriate property already devoted to a public use unless the Legislature has authorized it to acquire public property either expressly or by necessary implication.

The rationale is that such property is generally held by municipal or private corporations that also have powers of condemnation. Allowing expropriation of such property under general powers of expropriation would open the door to endless recriminatory condemnation litigation.

Later case law elaborated on the concept. In *Louisiana Power and Light Company v. City of Houma*, the First Circuit Court of Appeals indicated that an express grant must include the term “public property” or some equivalent. It found that the implied necessity rule applies in instances when the language of the statute, together with the legislative creation of the expropriating agency or the nature of the improvements authorized, require authority to expropriate property in public use. It also found it applicable where the grant of authority

would otherwise be defeated or rendered meaningless. The court, in discussing these two facets of the implied necessity test, held that the test may be invoked irrespective of whether the new use is the same as or different from the present use. The court also recognized the common law “exception” based on “the greater public interest” as being meritorious and treated it as a third facet of the “implied necessity rule,” rather than as an exception to the general rule. It limited the concept to cases of differing uses.

The broad language in *Ouachita* suggests that the State itself has unlimited power to expropriate public property. The case did not deal, however, with the expropriation of property of home rule entities within their own boundaries. A question arises as to whether, in that context, the home rule provisions of the 1974 Constitution limit the state’s expropriation powers or the legislature’s ability to delegate such powers to other entities.

In *City of New Orleans v. State (Audubon Park Case)*, the Court considered a statute purporting to transfer control of Audubon Park from the City to the State. Although the concurring opinion pointed out that the case was most appropriately discussed as an unwarranted interference in the internal governance of a home rule entity, the majority treated it as an expropriation issue, holding that it was an unconstitutional taking without the payment of compensation. The critical factor appeared to be that the property was taken without the compensation required by Article I, Section 4. The case appeared to assume the underlying ability of the State to effect an expropriation, provided that compensation were paid.

A later case, *Board of Commissioners vs. Department of Natural Resources (Bohemian Spillway Case)*, cast doubt on the precedential value of the *Audubon Park Case*. In the *Bohemian Spillway Case*, which dealt with a legislative act ordering the New Orleans Levee District to return land expropriated for the Bohemian Spillway, the Court rejected an argument that the legislative mandate amounted to a taking of a state agency's property without compensation in violation of Article I, Section 4 of the Louisiana Constitution. The Court indicated that Article I of the Constitution applies only to takings of private property. It does not protect governmental entities against unjust governmental action.

The Court noted that the *Audubon Park* court had held the legislative act unconstitutional on two grounds: as an unwarranted state interference with the internal affairs of a home rule charter city, and as an uncompensated taking of the city's property. In fact, however, the majority opinion relied on the taking argument only; state interference is mentioned only in the concurring opinion. Thus, the subsequent court in effect rejected the only basis on which the *Audubon Park Case* was based.

It further confused matters by distinguishing, for purposes of the takings analysis, between a situation in which the State is dealing with its own creature and agency and with property which to all practical intents and purposes is the property of the State and a situation involving home rule entities. It stated:

Unlike levee districts, home rule charter entities are regarded as more than creatures of the legislature; their powers and functions are by direct grant of the constitution and their discretion of deployment is constitutionally preserved against undue interference. Moreover, the framers,

in giving constitutional status to home rule charters, regarded the principles developed by the courts of accommodating individual rights with the state's exercise of its police power as analogously applicable to the resolution of conflicts between police measures and the constitutionally protected rights of home rule governments.

The case suggests that, insofar as home rule entities are concerned, the only limitations on expropriation by the State are those provided in the local government provisions of the constitution. The legality of the expropriation would depend on whether it violated Section 4, 5, or 6 of Article VI. Under Section 4, pre-existing home rule entities have broad powers, subject only to constitutional limits, and enjoy immunity from the legislature's reversing, withdrawing, or denying an exercise of the home rule entities' powers. Under Section 5, post-1974 home rule governments have a more limited immunity, in that the exercise of their powers can be denied by general law. Section 6 indicates that the legislature cannot revoke, change, or affect a home rule government's discretion to deploy its powers and functions.

The *Bohemian Spillway Case* suggests that expropriations of public property by the State must be analyzed under the principles used to resolve conflicts between home rule and police powers. Under that analysis, an expropriation must be necessary to protect or promote the vital interests of the State as a whole, and there cannot be other means of achieving the goal that are significantly less detrimental to home rule autonomy.

By the State

Airport Property

Under existing legislation, the State cannot expropriate airports owned or controlled by political subdivisions without first obtaining

the written consent of the governing body of such political subdivisions. Existing law, then, would preclude expropriation of NOIA by the State.

It is unclear whether the State could expropriate NOIA in the absence of the legislative prohibition. Under the *Audubon Park Case* the State would appear to have the power, so long as it compensated the City for the asset. As noted above, however, the Louisiana Supreme Court later rejected the rationale of that case, indicating that the constitutional provisions on takings applied only to private parties, and that the rights of home rule entities were defined by the local government provisions of Article VI.

Because Article VI does not specifically mention takings or compensation, it might be argued that the sovereign's inherent power of eminent domain is unfettered with respect to political subdivisions. On the other hand, certain other points raised by the Court in the later taking case—such as the distinction between the creature status of state agencies and the independent status of home rule entities, and the analogy to individuals for interpretive purposes—suggest limitations similar to those accorded individuals: i.e., that the property must be taken for a public purpose and compensation must be paid. In addition, there is a possibility that other sections of Article VI would prevent the expropriation of the Airport by the State, regardless of whether compensation were paid. For example, such a taking could be construed as effectively denying the City its power to own and operate an air carrier airport. In addition, it might be construed as revoking, changing, or affecting a home rule city's deployment of its powers. All that can be said with any certainty is that the outcome of litigation under an Article VI analysis is unclear.

Other Property

There does not appear to be a constitutional objection to the expropriation of streets by the State for airports owned by it. As noted above in the discussion on private property, there is an issue as to whether the State can expropriate property for the benefit of NOIA while it is owned by New Orleans.

By NOIA

Under existing law, NOIA does not have the power to expropriate public property owned by St. Charles Parish. There does not appear to be a constitutional bar to the legislature's expressly granting NOIA such power.

By the Louisiana Airport Authority or a New Regional Authority

As noted above, the Louisiana Airport Authority does not have express authority to expropriate property for airports that are not owned or controlled by it. It therefore could not expropriate property, private or public, for NOIA. An authority created to own the Airport could be expressly granted the power to expropriate public property.

APPLICATION OF STRATEGIES TO THE NEW ORLEANS REGION

Formulating strategies to develop regional cooperation with respect to the Airport depends on the nature of the underlying issues and problems. The issues fall into two broad categories: those relating to the physical impact of airport expansion on the surrounding communities and those inhibiting the formation of a strong regional force to promote the Airport. The first set of issues includes very specific matters that must be addressed with the City of Kenner and St. Charles Parish, regardless of what entity owns and controls the Airport. The second set raises the question of ownership.

The experience of other airports suggests three strategies that might be useful in the New Orleans context: a reallocation of zoning and eminent domain powers, the negotiation of an intergovernmental agreement with Kenner and St. Charles, and the formation of a regional authority.

Reallocating Zoning and Eminent Domain Powers

As noted above (see page 67), land use, zoning, and eminent domain powers generally are vested in local government. Thus, when an airport owned by one municipal entity is in an expansion mode that involves the territory of another, it has to reach accommodation with the surrounding community in order to effect its program.

There are two situations in which expansion has been possible without such consent: where the law grants the airport powers that supersede the host entity's traditional local land use powers, and where the host entity has ceded traditional land use powers through an intergovernmental agreement.

Existing law clearly vests land use and zoning powers with Kenner and St. Charles, the local government units. It precludes New Orleans from exercising the power of eminent domain for airport expansion. Neither the City of Kenner nor St. Charles Parish has ceded its local powers with respect to the Airport.

Because of uncertainties, contradictions, and frequent reversals of cases, it is impossible to say with certainty whether the zoning and eminent domain powers could be reallocated in favor of the Airport. Subject to that caveat, it appears that the legislature could amend the statutes governing the power of eminent domain to authorize New Orleans or a newly established authority to exercise the power of eminent domain for the benefit of the Airport.

Whether Kenner or St. Charles Parish could be deprived by statute of their power over land use and zoning within their boundaries is open to serious question. One or more constitutional provisions, including those dealing with local home rule entities and vesting zoning power in local government units, are likely to preclude this change. Based on the interviews with government officials that BGR conducted for this study, such an amendment is not a realistic option.

Negotiation of an Intergovernmental Agreement

The experience of other airports shows that, where the zoning power and the power of eminent domain rest with a government other than the airport sponsor, reaching accord with that government is the sine qua non for expansion. In New Orleans'

case, reaching such accord with Kenner and St. Charles Parish is the critical step for the expansion of the east/west runway and the addition of the north/south runway.

Although New Orleans owns the airport of today, it owns only a part of the airport of tomorrow. To grow NOIA, New Orleans needs to come to terms with the governments that own and/or control the other essential pieces. This development will involve the negotiation of a detailed intergovernmental agreement addressing all the issues that need to be resolved if the Airport is to expand. These include the scope of airport expansion, land acquisition, zoning, economic development opportunities, taxation, noise reduction measures, relocation of affected residents and businesses, representation and ownership of the Airport, compensatory payments, and mechanisms for future conflict resolution.

There is no obstacle to undertaking such negotiations, although there will undoubtedly be real obstacles, legal and financial, to implementing particular solutions. The list of issues that have been put on the table to date is broad-ranging and includes infrastructure improvements and compensation for loss of tax revenues. Some of the items on the wish list are not permissible expenditures for airports and would have to be funded from other sources, such as state funds or the city's general funds.

Creation of a Regional Governance Structure

It is impossible to gauge with any certainty the impact of the governance structure on any given situation. There is reason to believe, however, that a properly constituted regional authority could contribute significantly to the airport's growth in a number of ways.

While the Louisiana Airport Authority may come to mind as an existing governmental body with the legal power and authority needed to facilitate development of truly regional NOIA, the Louisiana Airport Authority as currently constituted would not appear to be the appropriate body for the role envisioned here.

Advantages

PUBLIC-PRIVATE ALLIANCE

Creation of a new regional authority would facilitate the formation of a broad-based, public-private alliance to promote the Airport. Important growth issues—such as increasing the limited number of flights into New Orleans, obtaining state and federal funding, and maintaining NOIA's position as the premier airport in the Gulf Region—can be resolved only through concerted effort by businesses and governments in the region.

As noted above, the obstacles to forging the needed alliance include the fact that the Airport does not enjoy the confidence of many in the business community and government circles. NOIA's Operational Audit identified (and rejected as untrue) a number of serious criticisms leveled at the Airport by outsiders, including allegations of gross mismanagement and patronage. BGR's interviews confirmed the auditors' assessment that patronage is perceived as a major factor in operations.

Replacing the image of the Airport as a mismanaged institution operated for the benefit of New Orleans politicians with the concept of a well-run economic instrument operated for the benefit of the entire region is critical to gaining support for the development of the Airport. BGR believes that there are two ways to accomplish this change. One involves transferring control of the Airport to a regional entity; the other

involves the City's taking serious, meaningful steps to investigate, disclose and, where necessary, change its practices.

While transferring control to a regional authority might seem like a radical solution to a perception problem, in the absence of meaningful action by the City to investigate and deal with the issues, it might be the only solution. Unfortunately, the Operational Audit indicates that the City is unwilling to deal seriously with the issues that create so much cynicism with respect to the Airport. For example, the report summarily disposes of the public's criticism of the airport's contracting practices by arguing that patronage is innocuous if the beneficiaries of the arrangement are well qualified and do competent work. The report then proposes a governance change that exacerbates some public criticism by taking the contracting process farther below radar. At another point, the report attacks criticism as a cause of management problems. None of these lines of argument instill great confidence.

BROADER BASE OF LEGISLATIVE SUPPORT

A multi-parish regional authority could help to create a broader base of support for legislative action that might be needed to facilitate expansion. As is discussed above, the outcome of expansion negotiations is seriously impacted by the legal parameters in which the debate takes place, particularly by who holds the trump cards for zoning and eminent domain. A regional authority, by involving more jurisdictions, could bring greater pressure to bear on the legislature to make adjustments favorable to expansion.

In particular, the legislature is more likely to grant the power of eminent domain to a multi-parish authority than to the City of New Orleans. The availability of such power could be critically important. A portion of the land needed for the runway was

subdivided and sold in small parcels, and St. Charles Parish was granted rights-of-way in the areas marked for streets on the subdivision plat. Without the power of eminent domain, the Airport will have to negotiate purchases from many small landowners, any one of whom could block the development by refusing to sell.

BROADER BASE FOR FINANCING

Certain issues raised by St. Charles Parish, such as infrastructure improvements and economic development projects, would require significant investments that cannot be made legally by the Airport. Clearly, the City of New Orleans lacks the means to make such investments. A regional authority would provide a broader base for financing, or for soliciting state or federal funds to finance, off-site infrastructure improvements or economic development projects.

FRAMEWORK FOR PLANNING

Replacing the existing governance structure with a regionally based one would provide the appropriate framework for unified, coordinated planning far into the future. Although there are perceived threats, such as the potential expansion of Mississippi's Stennis International Airport, there is no consensus in southeastern Louisiana as to what form local airport development should take. There is not even a coordinated effort to develop an approach.

To date, planning has consisted of warring efforts between the Louisiana Airport Authority, attempting to place a new, regionally-owned airport somewhere between Baton Rouge and New Orleans, and New Orleans, attempting to keep a regional airport here under its control. Placing the existing airport under a properly constituted regional authority could help rationalize long-term planning decisions by eliminating

from the debate over location the distortions that occur when the subtext is a change in control.

REGIONAL PROMOTION

The formation of a regional authority could also help by uniting southeastern Louisiana in promotion of the air service needs of the region. Ultimately, the airport's growth, and its ability to maintain its service area, will depend on the region's promotional efforts at the state and federal levels.

BGR recognizes that the State has already established one regional body, the Louisiana Airport Authority, partly for promoting and funding a regional airport. That particular authority is ill suited to promote joint action, however, since it had its genesis in conflict rather than cooperation. Some New Orleans legislators claimed that they were not even consulted about its creation. An effective regional authority can be created only with the consent and active participation of New Orleans and other key entities.

FRAMEWORK FOR COOPERATION

Transferring the airport to an entity in which Kenner and St. Charles participated could help overcome psychological hurdles to cooperation and create a more responsive framework for addressing the real environmental issues. Because the regional authority would allow multiple jurisdictions (including the host governments) to participate in airport governance on a similar basis, it has the potential to shift the dynamics of negotiation from a confrontation with an intrusive "foreign" government to a negotiation between participants in a venture. It also can create a better dynamic by redistributing the perceived benefits of ownership to all affected parties, eliminating the dichotomy created when the

perceived benefits flow to one government and the negative impacts of the operation to another.

LITTLE LOSS TO NEW ORLEANS

The citizens of New Orleans have much to gain and little to lose by transferring the Airport to an entity capable of marshaling support from other governments, as well as citizens and the business community throughout the area. The indirect economic benefits anticipated from airport expansion and growth far exceed the revenues that the City can derive directly from its ownership of the Airport.

This seemingly anomalous result follows because the Airport is not a revenue-producing asset for the City and, except in limited circumstances, cannot be converted into one. The limitations are as follows:

1. Federal law requires that revenues generated by airports be used for airport-related purposes. It prohibits the City from using such funds for general municipal purposes. Thus, in making a transfer, the City would not be giving up any income.
2. Realistically, the City cannot convert the Airport into a revenue-generating asset by changing its use. While it might be possible in theory to develop the airport land for residential or commercial use, this change in use could not be made without constructing a new airport elsewhere. The construction would require substantial local, state, federal, and private investment and backing.
3. Furthermore, under existing federal regulations, the city's recovery from the sale or lease of the Airport or its assets would be limited in most circumstances to unrecouped capital contributions and unrecouped operating expenses made or incurred in the preceding six years. As of

December 31, 1997, the City had only \$2,674,912 of capital invested in the Airport. In addition, certain types of investments made by the federal government would have to be repaid.

4. An exception from the restriction on sale or lease proceeds is available for up to five airports that choose to participate in the FAA's pilot program for the transfer of airports to private entities. Congress has authorized the FAA to grant air carrier airports participating in the program waivers from laws precluding the retention of lease proceeds. Thus, New Orleans would have an opportunity to realize value through the transfer of the Airport to a private entity if it acted in the immediate future to participate in the pilot program. To date, New Orleans has shown no interest in this limited opportunity.

5. Laws or interpretations might change in the future to allow an airport to receive sale of lease proceeds on the transfer of an airport. New Orleans could preserve its potential to take advantage of any such change by retaining title to and leasing the airport's land and facilities to the regional authority on terms that would provide for payments to New Orleans under changed circumstances.

Given the above restrictions, what, if anything, would the City lose by turning over control of the Airport to a regional authority? In the course of BGR's interviews for this report, many interviewees suggested that the opportunity for patronage would be lost; they did not identify any other significant loss. Like them, we believe that New Orleans has little else to lose from the transfer of airport sponsorship.

In addition to the potential gains cited above, BGR perceives a number of other reasons for transferring control of the Airport.

REGIONAL SERVICE AREA

In 1950, the City of New Orleans had 74 percent of the population of the metropolitan area; it now has only 37 percent of the metropolitan region's population. From 1970 to 1990, the New Orleans MSA experienced a 17 percent growth in population, with St. Tammany Parish's population increasing by 127 percent and St. Charles' by 68 percent. New Orleans' population declined by 16 percent in that period. Thus, while the Airport was once under the control of the government elected by a majority of the area's population, this vital economic engine is now under the control of a government that represents a decreasing percentage of the metropolitan region's population.

There is a strong policy argument for aligning ownership and control of a public asset with the area that it serves and impacts.

COMPARATIVE CAPITAL INVESTMENT

Federal and state investments dwarf the city's equity in the Airport, weakening equitable claims to ownership. As of December 31, 1997, the Airport had total contributed capital of \$196,698,802. In contrast to the city's contribution of \$2,674,912, the state contribution equaled \$68,599,445, and the Federal portion amounted to \$125,424,445.

BUSINESS FOCUS

The creation of a properly constituted regional authority would also carry with it the advantages attributable to the authority form of government. These include the creation of a framework that encourages the Airport to operate with a more businesslike focus. Besides eliminating cumbersome civil service rules, the change would help to control political interference. The ability of any one person or group to use the Airport for political purposes would be greatly diluted if board members were appointed by, and answerable to, different groups.

MANAGEMENT IMPROVEMENTS

Because the establishment of a regional authority would involve a management overhaul, it provides an opportunity to implement the management structure most likely to promote efficiency and growth. In that regard, one option worthy of serious investigation is a private management contract with one of the world's premier airport management companies. The use of such a company could eliminate much of the potential for intergovernmental squabbling over patronage and jobs. It could also promote efficiencies and service improvements through an incentive-based compensation package.

Risks and Limitations

To some, converting to a regional authority raises the risk that Kenner and St. Charles Parish would block airport expansion through board control. Such a possibility is, of course, a matter which must be taken into account in developing board composition. It is not, however, a necessary result of a change in governance.

It is neither necessary nor desirable to give the airport's immediate neighbors control of the airport board. Indeed, structuring an authority in that way would defeat the very reason for a regional authority, by sacrificing the interests of the region as a whole to those of a particular constituency.

The host communities need to be represented as equals at the board level. They are, however, only one of a number of interests that need to be represented. A regional board should include, in addition to New Orleans, St. Charles Parish, and the City of Kenner, representatives from Jefferson and other parishes in the metropolitan region, and in view of the state's interest in and role in airport financing, the state government.

There are different ways of structuring a board. Although the most common is to base representation on population, others should be considered. For example, it might be appropriate to base representation in part on the distribution of travelers within the metropolitan area, recognizing that some areas of the region have a greater interest than others in the Airport.

Unfortunately, transferring the Airport to a regional authority (or to any other public entity) would not ameliorate the city's fiscal problems. As noted above, the FAA's current stance on revenue diversion raises serious obstacles to the receipt of compensation by an airport sponsor on the sale or transfer of an airport. In simple terms, the FAA views sales proceeds and lease payments from such transfers as airport revenues which must be reinvested by the airport sponsor in airports. With the exception of an amount equal to unreimbursed capital contributions and operating expenses, such payments cannot be used for general municipal purposes.

The FAA leaves the door open for negotiation, indicating that it will apply the revenue-use requirement flexibly, taking into consideration special conditions and constraints imposed by a change in ownership. This opening should be pursued in any transfer of the Airport, with a view to obtaining for the City whatever compensation the FAA might allow. Expectations need to be tempered, however, since recent FAA positions taken as a whole suggest that significant capital infusion is unlikely.

Legal and Financial Obstacles

BGR has not identified any insurmountable legal or financial obstacles to converting to a regional authority. The transfer would require authorizing legislation and the consent of various interested parties, such

as the FAA and airlines. Provision would have to be made for the payment of existing bonds. The biggest hurdle would be political resistance from the City of New Orleans, which has made clear that it does not want to give up control of the Airport.

OTHER ISSUES IN AIRPORT DEVELOPMENT

There are a number of other issues that need to be addressed to facilitate expansion and growth of the Airport. These include the concept of a new regional airport, NOIA's communication with the citizens and representatives of Kenner and St. Charles Parish, the airport's failure to address adequately operational issues that aggravate the host communities, and the community's cynical view of airport operations.

A New Airport?

BGR is concerned that the concept of a new airport impedes the resolution of the airport's existing problems by enabling political leaders to avoid the environmentally unpleasant and politically explosive issues associated with the expansion of NOIA. The concept persists despite growing evidence that a new airport is not a realistic option for meeting the area's air needs.

BGR notes three main obstacles to the construction of a new airport in time to address the region's near- and intermediate-term needs:

First, the implementation of such a project would require concerted and unified efforts on the state, national, and local levels. Past discussions suggest that the regional consensus that would be necessary to implement the project is lacking. In the early 1990s the State of Louisiana, through the Louisiana Airport Authority and the City of New Orleans, conducted rival studies on the development of a new airport. Ultimately, the City of New Orleans abandoned its own quest for a new site. Both Baton Rouge and New Orleans opposed the concept proposed by the Louisiana Airport Authority. The FAA has indicated that

additional funds for studying a new airport will not be forthcoming until such time as all the local parties are on the same page.

Second, only one major new airport, Denver International, has been built in the United States since Dallas/Fort Worth opened in 1976. Only one ex-military base, Bergstrom Air Force Base, is being converted to civilian air carrier use. It will replace Austin's Robert Mueller Airport. Efforts by other cities or states to develop major new airports have come to naught.

Federal funding allocated to airport infrastructure projects is inadequate to meet projected demands. The American Association of Airport Executives (AAAE), an airport trade group, estimates that capital requirements far exceed available funding. According to the AAAE, surveys of airports have consistently shown a need for 10 billion dollars annually for airport development and capital reconstruction. The federal government has been providing approximately one-fifth of that amount through grants under the Airport Improvement Program.

The FAA indicates that additional capacity is crucial but that, given the high cost of new airport construction, creation of new airports is not a common capacity enhancement technique. Such construction faces formidable financial, environmental, social, and political constraints.

Third, the situation of New Orleans, whether measured by delays or demand, is far less critical than that of many competing entities. In 1996, NOIA ranked 43rd in terms of aircraft delay (measured as delays of 15 minutes or greater per 1,000 operations). New Orleans measured delays

of that magnitude for 0.83 operations per 1,000. Newark International Airport, by contrast, had delays of that magnitude for 65.25 operations per 1,000. Twelve other airports had delays in the double digits per 1,000 operations.

NOIA is not among the 31 airports expected to have annual aircraft delays exceeding 20,000 hours in 2006. The top priority capacity for the FAA's Southwest Region is the construction of another parallel runway at DFW.

Improvements in Communication

One of the recurring themes in interviews with political leaders representing Kenner and St. Charles Parish was the lack of effective communication between the Airport, on the one hand, and the political leadership and citizens of impacted communities on the other.

We recognize that there are certain established lines of communication for disgruntled citizens, such as the noise hotline and the airport's Noise Compatibility Committee. We also recognize that attempts are being made to encourage dialogue among political leaders in New Orleans, Kenner, and St. Charles. Examples of such efforts include the joint council meetings that were held over a year ago, the inter-council committee established last fall, and the mayoral summit.

While efforts such as these should be encouraged, they are not enough to address problems stemming from a lack of information flow. The Airport could take a number of additional steps, such as embarking upon a concerted public relations effort to provide the governments and citizens of Kenner and St. Charles Parish with timely, complete and responsive information

concerning its plans. It could also listen more actively to community concerns. Although airport officials claim that they routinely apprise Kenner officials of airport development plans, Kenner council members have complained over the years that they are left in the dark about such plans. St. Charles Parish officials have also complained that they have been left out of expansion talks.

Citizens complain that the Airport goes through the motions of public input in a pro form a way, without a desire for dialogue. Kenner residents were angered and disgusted by the format of the November 17, 1997 public hearing on the east/west taxiway conversion. At that hearing, airport officials eschewed the open-meeting format in favor of booths staffed by airport personnel. Members of the public could ask questions at these booths and/or give comments to two court reporters.

Kenner residents viewed the substitution of this controlled, fragmented environment as an attempt by airport officials to stack the deck in their favor at the hearing and to avoid an outpouring of hostility similar to one that occurred at a 1991 hearing. The end result was to compound the anger associated with the issues with anger at the format of the meeting. Kenner City Council subsequently held its own hearings to provide citizens with a forum for expression.

Reading through the record of public comments and the official response to them contained in the Environmental Assessment Report for the east/west taxiway conversion, one can certainly understand citizens' frustrations. In too many cases, the explanations are unresponsive. The Airport dismisses the complaints as not directly related to the proposed project or answers them in generalizations that do not address the specific situation of the individual

speaker. While this limited focus might be technically acceptable for FAA purposes, it leaves citizens unsatisfied.

The Airport could also take a more active role in addressing operational issues that concern and aggravate the community. An example of such an issue is overflights in north Kenner neighborhoods. Kenner citizens have complained for more than ten years that airplanes deviate from established flight patterns requiring turns over Lake Pontchartrain, making an early turn over north Kenner. Their leaders blame the Airport, claiming that it is the only airport in the United States which does not impose penalties on airlines for flight pattern deviations. The Airport in turn points to the FAA, saying only the FAA can impose such penalties.

Mayor Morial promised in December 1997 that the Airport would work with the FAA to correct the matter and would seek in lease negotiations with the airlines a commitment that they keep to the flight paths. Ten months later the Mayor announced that the airlines had asked the FAA to take action against the Airport for even thinking about this course of action; that certain procedural channels must be followed; and that following procedures usually does not result in any change. To date the issue still festers.

Airport management should be able to determine, in a period shorter than ten years, the extent to which planes are deviating from recommended flight patterns and what, if anything, can be done about the deviations. Failure to address this kind of environmental issue adequately in a reasonable period of time is interpreted as an indifference to community concerns.

Review of Airport Management

Negotiations among St. Charles, Kenner, and New Orleans might be sufficient to resolve the territorial issues relating to expansion. Such negotiations will not be enough, however, to solve other important growth issues, such as increasing the limited number of flights into New Orleans, obtaining state funding for the second runway, and maintaining NOIA's position as the premier airport in the Gulf Region.

Success on these fronts will require concerted efforts from the political and business communities in the region. By way of example, Mayor Morial indicated at the Airport Summit held in October 1998 that the City might be asking the business community for financial assistance in the form of guaranteed minimums to help increase flights.

To obtain the resources needed to promote the Airport, the City will need to forge a strong, broad-based public-private alliance to act as a lobbying force and to raise funds. BGR believes that to create this kind of support, the City will have to take meaningful steps to dispel some of the suspicions and cynicism that surround the Airport.

The airport's Operational Audit identified a number of criticisms leveled at the airport management by outsiders, including allegations of gross mismanagement and patronage. BGR's interviews confirm the auditors' assessment that patronage is perceived as a major factor in airport operations.

Confronting these management issues honestly, openly, and fully is a critical step in developing regional cooperation to promote the Airport. One way of confronting these issues satisfactorily would be through participation in "Airport Performance Evaluations," a voluntary program for

assessing the financial efficiency of airports. The program is sponsored by Air Transport Association of America, an airline trade group. Fourteen airports, including Atlanta, Cleveland, Philadelphia, and Portland, have participated in it. New Orleans was approached about participating in the program in 1993, 1994, and 1995 but did not do so. The invitation remains open. The program would provide a way for New Orleans to address concerns about the airport's performance, without incurring the additional consulting costs. Another option is a study conducted on behalf of, and paid for by, an independent group, such as the New Orleans Regional Chamber of Commerce.

BGR is aware that the Airport purports to address the management issues in its Operational Audit. Unfortunately, the report failed to address patronage and other issues impacting financial efficiency in a way that can give the community comfort that its suspicions are unfounded.

RECOMMENDATIONS

Having considered the strategies and experience of other airports, and the specifics of the New Orleans situation, BGR recommends the following:

1. that a broad-based regional authority, with representatives from Kenner, St. Charles Parish, New Orleans, Jefferson Parish, and other parishes in the metropolitan region, be formed to sponsor and operate the Airport;
2. that the City of New Orleans retain title to the airport's existing land and facilities and lease them to the new authority on terms that would allow the City to receive compensation for the airport's assets should lease or other payments become legally permissible in the future;
3. that serious and immediate consideration be given to hiring one of the world's premier airport management companies;
4. that the City of New Orleans, Kenner, and St. Charles Parish enter into a detailed intergovernmental agreement addressing all the issues that need to be resolved if the Airport is to expand in accordance with its plans;
5. that the concept of a major, new airport as a solution to the region's near- and intermediate-term air needs be abandoned;
6. that NOIA embark upon a concerted effort to provide the citizens of the host governments with timely, complete, and responsive information on airport matters of interest or concern to them; and

7. that the Airport take a more active role in addressing operational issues that concern and aggravate the neighboring communities.

BGR believes that the establishment of a regional authority is the optimal solution to southeastern Louisiana's airport issues and that steps should be taken immediately to accomplish this objective.

APPENDIX A: AIRPORTS AND THEIR FORMS OF GOVERNANCE

Albany Authority	Detroit County Department	New York City area: LaGuardia, JFK, and Newark Port Authority
Atlanta City Department	Greater Peoria Authority	Oakland Port Authority
Austin City Department	Harrisburg Authority	Oklahoma City City Department
Baltimore/Washington State Department	Houston City Department	Orlando Authority
Baton Rouge Special District	Indianapolis Authority	Philadelphia City Department
Birmingham Authority	Jacksonville Port Authority	Phoenix City Department
Boston Port Authority	Kansas City City Department	Pittsburgh County Department
Burbank-Glendale-Pasadena Authority	Knoxville Authority	Portland Port Authority
Charlotte City Department	Las Vegas County Department	San Antonio City Department
Cleveland City Department	Los Angeles City Department	San Diego Port Authority
Chicago: O'Hare and Midway City Department	Louisville Authority	San Jose City Department
Cincinnati/Northern Kentucky Authority	Memphis Authority	Seattle Port Authority
Port Columbus Authority	Miami City Department	South Bend-Michiana Authority
Columbus, Rickenbacker Port Authority	Milwaukee County Department	Tampa Authority
Dallas/Fort Worth Joint Venture	Minneapolis-St. Paul State Commission	Washington, D.C. Dulles and National Authority
Denver City and County of Denver	Nashville Authority	

APPENDIX B: AIRPORTS WITH REGIONAL ISSUES

ATLANTA

Hartsfield Atlanta International Airport (Hartsfield) is owned and operated by the City of Atlanta. A small part of the airport is in Atlanta and Fulton County; most of it is in neighboring Clayton County. Portions are located in cities within Clayton: College Park, Forest Park, and Hapeville.

Hartsfield has grown dramatically. Between 1991 and 1996 passengers increased from 37.9 million to 63.3 million. Planners expect traffic to increase to 121 million passengers a year by 2015.

The airport expansion has had a major impact on surrounding communities. The town of Mountain View was virtually decimated by airport expansion in the 1980s. As a result of expansion in the 1970s and 1980s, the population of the City of College Park dropped from 30,000 to 18,000.

A proposed fifth runway, with construction scheduled to begin in 1999, is expected to take another serious toll on College Park's population and property, sales, and business tax revenues. The runway was originally proposed as a 6,000-foot runway for commuter planes. It was estimated that, under those circumstances, 2,500 residents would lose their homes, 155 businesses would have to relocate, and College Park would lose 40 million dollars in taxes and fees. The toll might be even higher, since the airport recently proposed making the runway a 9,000-foot, full-service one.

Prior to 1992, airport expansion was greatly facilitated by the airport's having the power of eminent domain in areas outside the City of Atlanta. The power was repealed in 1992, amidst talk that Atlanta was planning

to build a second airport. In connection with the expansion of the fifth runway, Atlanta is seeking to reach with College Park and Clayton County appropriate intergovernmental agreements on land acquisition, design, and construction details. If it fails to do so, it will be forced to return to the legislature to revisit the eminent domain issue.

Atlanta has offered to relocate the Georgia International Convention Center in exchange for College Park's condemnation power. College Park has indicated that any agreement it enters into with respect to the fifth runway will have to address long-term plans. It is also seeking reimbursement for lost tax revenues.

The airport is in the process of formulating long-term plans through an intense and inclusive master-planning process. The options under consideration range from a vast plan calling for a new runway, two new terminals, rerouted interstates, and a mass transit network, to a no-build option.

The airport's master-planning process involves several phases. The first, the Study Design Phase, produced the game plan, including schedule, budget, and management plans to guide the process. The second phase, the formulation of the Vision and Policy Document, consisted of the collection of input from hundreds of stakeholders, representing diverse interests and perspectives. As part of that phase, the airport held 65 "scoping sessions," five public meetings, and three visioning forums. These were attended by community groups, airport tenants, users and service providers, elected officials, regulatory agencies, planning agencies, business and industry groups, and citizens of the Atlanta

metropolitan area. At these sessions the airport's director described the airport's situation: that forecasts showed a doubling of traffic, and that Delta, the principal tenant, would go elsewhere if its needs were not met. The director then sought input as to what the community wanted.

The third phase, which is in process now, consists of the formulation of the technical master plan by the Master Plan Coordinating Committee (MPCC), a 45-member committee with representatives from key constituencies. Members include elected officials, airport users and service providers, airport tenants, environmental groups, regulatory agencies, planning agencies, community groups, and local government administrators.

According to the Atlanta Department of Aviation, some members of the MPCC were identified through earlier service on the airport advisory committee. Others were identified through a series of outreach opportunities earlier in the planning process. Each community organization represented on the committee selects its own representative.

The committee, using the airport's forecasts and the criteria set forth in the vision statement, initially developed 36 options for dealing with the airport. After further refinement and evaluation by the Committee, the number of options was reduced to 15. These were further reduced to four, including a "no-build" option, after being evaluated under 57 quantitative and qualitative criteria. A final proposal will be chosen from the remaining alternatives and subjected to a regional review process and public hearings.

A split developed in the MPCC between those favoring expansion and the representatives of the surrounding communities. The split was reflected in a procedural vote

last fall to determine whether to retain the existing guidelines for rating the options, under which the "no build" option scored highest. The vote was 18 to 14 in favor of revisions. The airport director decided to keep the existing criteria, in view of the lack of a clear consensus in favor of change.

The airport seems to be using on a metropolitan basis the same approach to master planning as is used by the City of Atlanta for land use planning within the city. The process involves having constituent groups with disparate interests work together to arrive at a decision.

Several proposals were made in the 1990s to change the governance of Hartsfield. In 1994, in the midst of a corruption scandal involving bribery and kick-backs at Hartsfield, legislation was introduced for a state take-over of "existing mismanaged airports." The bill died, and Hartsfield's management was cleaned up by the appointment of one of the most highly respected airport managers in the world. Because of her managerial integrity, she was named "public official of the year" in 1996 by *Governing* magazine.

In the spring of 1998 rumors began to circulate that the mayor of Atlanta would not renew the airport manager's contract. Pressure began to mount for transferring control of the airport to a regional body.

The *Atlanta Journal-Constitution* urged the creation of an independent authority, established by the State, but essentially regional in character. The newspaper set forth the reasons for a governance change. First, Hartsfield will always need to serve a region bigger than the city. Atlanta contains a smaller and smaller percentage (now 10 percent) of the metropolitan population dependent on, and impacted by, the airport. Second, it needs to be insulated from corruption.

Legislation was introduced last spring for the creation of a House Study Committee on the Governance of Hartsfield International Airport. The Committee, to be composed of four house members appointed by the speaker of the house, is to look at alternative forms of governance, including the creation of a single-purpose authority. The recitals to the legislation indicate that the study is prompted by two considerations: the extraterritorial location and regional impact of Hartsfield and the past mismanagement.

The *Atlanta Journal-Constitution* has reported “an awkward racial tension” in discussions. To some a regional authority represents a forceful type of public management free from political pressure. To others, it is a mechanism to deprive Atlanta of its traditional powers now that it is minority controlled and to reassert white control.

The mayor of Atlanta added fuel to the fire by dismissing the well-respected manager, an appointee of his predecessor, exacerbating fears of a return to corruption.

BURBANK-GLENDALE-PASADENA

The Burbank-Glendale-Pasadena Airport (Burbank Airport), which was formerly owned and operated by the Lockheed Corporation, is located in the City of Burbank. It is owned and operated by the Burbank-Glendale-Pasadena Airport Authority (Burbank Airport Authority), an authority created pursuant to a 1977 joint powers agreement among the cities of Burbank, Glendale, and Pasadena. The three municipalities banded together to buy the airport from Lockheed.

The joint powers agreement was entered into, and the authority was formed, pursuant to Section 6500 of the California Government Code. The Code prohibits

the Burbank Airport Authority from permitting or authorizing any activity which increases the noise-impact area, and it requires noise monitoring and noise mitigation to the greatest extent possible. It also prohibits the lengthening of runways or the purchase by condemnation of certain residential property.

The joint venture agreement provides that the Burbank Airport Authority shall have all powers common to the cities to operate, repair, maintain, improve, and administer the airport, as well as all powers enumerated in Section 6546.1 of the California Government Code. Among the powers specifically granted is the power to acquire real or personal property by, among other things, the exercise of the power of eminent domain pursuant to California Government Code Sections 6502, 37350.5, and 50470.

The Burbank Airport Authority is governed by a nine-member commission. The governing bodies of the three cities appoint three members each. Most actions of the commission require an affirmative vote. An affirmative vote of a majority of the appointees of each of the cities is required to issue bonds and other forms of indebtedness, to pay surplus revenues, or to increase the size of the noise impact area, measured as of September 14, 1976.

The Burbank Airport is an interesting cautionary tale. It is proof perfect that the form of government cannot per se ensure harmony. It also illustrates the value of intergovernmental agreements.

For twenty years the authority’s board operated on a consensus basis. The consensus dissolved under pressure created by a plan, which was proposed about nine years ago, to replace the existing terminal with a new one. The existing terminal, which was built in 1930 and is located 400 feet

closer to the runway than FAA regulations allow, covers 163,000 square feet with 14 gates. The proposed one would have 450,000 square feet and 19 gates. The expansion plan also calls for the acquisition of 130 acres of land from the Lockheed Corporation.

In 1995 Burbank, in response to the proposed terminal expansion, elected an anti-airport council, which in turn elected anti-airport expansion commissioners to the airport commission. For several months the new members totally disrupted the commission's business, with the commission failing even to adopt minutes. Eventually the other members proceeded to take action by majority vote, over the Burbank opposition.

The proposed terminal expansion spawned a number of lawsuits. In 1993 the City of Los Angeles and the Los Angeles Unified School District filed separate suits alleging that the Burbank Airport's environmental impact statement did not comply with California's Environmental Quality Act. The school district dropped its lawsuit; the City of Los Angeles eventually lost its suit.

The City of Burbank meanwhile asserted that the Burbank Airport Authority was required to submit to a public review process and to obtain approval of the City of Burbank for the new terminal before building it. The claim was based on a section of the California Public Utilities Code (PUC) that requires airports to obtain the prior approval of local government entities before acquiring land. In October 1996 the Burbank Council adopted a measure disapproving the land acquisition.

The City of Burbank and the Burbank Airport Authority filed a multitude of lawsuits covering, among other issues, the vote required under the joint powers agreement, the adequacy of the Burbank Airport's environmental impact statement, whether

state law prohibited expansion of the airport's noise contours, whether the PUC provision requiring local approval of land acquisitions was preempted by federal law, the validity of Burbank's PUC review procedure, and the applicability of the PUC provision in view of contractual arrangements among Burbank, Glendale, and Pasadena.

Eventually the courts rejected all challenges to the environmental impact statement. Various courts held that the City of Burbank had not timely filed its suit questioning the voting provisions; that the PUC provision on land acquisition was not preempted by federal law; that state law barred the airport from increasing its "noise-impact area"; and, most critically, that the City of Burbank had in the joint powers agreement delegated away its right to block the sale of the land through land use controls. The California Superior Court held that the agreement "expressly and unequivocally grants to the authority the right to acquire land for the operation of the airport, to exercise the power of eminent domain, and to do all acts necessary or desirable to accomplish the purposes of the joint powers agreement." The case is on appeal.

After the Superior Court's holding that Burbank had surrendered its power to veto the Burbank Airport's land acquisition, Burbank filed another suit alleging violations of its zoning and local (as opposed to PUC) land use laws. As of early March 1999 no decision had been rendered in that case.

The cost of the terminal litigation has been very high. By mid-1998, the City of Burbank had spent six million in legal fees and expected to spend another 1.5 million dollars in the next fiscal year.

The terminal expansion issue arose in the context of a long-standing dispute between Burbank residents and the airport over noise measures—a dispute that antedated the transfer of the airport to the Burbank Airport Authority. For years anti-noise activists had pushed for an enforceable flight curfew and flight caps. The airport responded that it lacked the power to unilaterally impose such measures; only the FAA could impose them through a Part 161 proceeding. To date no airport has succeeded in having restrictions imposed through such a proceeding.

The terminal and long-standing noise issues became interwoven. The City of Burbank tied airport expansion to the imposition of such restrictions. The Burbank Airport Authority sought to resolve the impasse by asking the airlines to accept a voluntary curfew. The request was rejected by the Air Transport Association. In October 1998 the Burbank Airport Authority indicated a willingness to undertake a Part 161 study, with the participation of the City of Burbank, if Burbank agreed to be bound by the results. Burbank refused to agree in advance to allow the expansion, regardless of the results of the Part 161 process. The dispute continues.

CINCINNATI

The Cincinnati/Northern Kentucky International Airport (Cincinnati Airport) is located in Boone County Kentucky, about 13 miles from downtown Cincinnati. It is owned and operated by the Kenton County Airport Board, which was created by the Kenton County Fiscal Court under Kentucky law.

Kenton County, which is adjacent to Boone County, bought the airport from the military toward the end of World War II. The airport has rapidly expanded since the mid-1980s, and traffic is expected to double by 2010.

The airport has a board with seven voting members, all of whom must be Kentucky residents and one of whom must be from Boone County. It also has an advisory board. Until recently, the ten advisory members were appointed by the Governor of Kentucky based on the recommendation of the Kenton County Judge Executive. Although representation from Ohio was not legally required, most of the advisory members came from the Cincinnati business community.

In December 1998, the advisory board was expanded to eleven members and the appointment process changed. Each of the following now has one appointment to the advisory board: the Mayor of Cincinnati; the Commissioners of Hamilton County, Ohio; the Governor of Kentucky; the Judge Executive of Boone County; and the Judge Executive of Campbell County, Kentucky. The Judge Executive of Kenton County appoints the other six members.

Members of both the airport board and the advisory board serve on the board committees. Although the committees do not have authority to act on behalf of the board, they originate all board actions, formulate policy with staff, and make recommendations. All members, including advisory board members, vote in committee.

In the late 1980s and early 1990s relations between the Cincinnati Airport and Boone County were very poor. In the early 1990s representatives of the airport and the county began to meet on a quarterly basis to work through the issues. Eventually they succeeded in meshing the airport's master plan with Boone County's comprehensive plan. Boone County agreed not to approve residential development unless the housing will be located outside the 65 dln noise contour or the developer agrees to provide appropriate sound insulation.

Noise, which affects residents of both Ohio and Kentucky, has been a serious issue for the airport. The brunt of noise falls according to the direction of the runway, with east/west runways negatively affecting Kentucky residents and north/south runways affecting residents of both Kentucky and western Hamilton County, Ohio. Prior to this decade there was one north/south runway and one east/west runway. A second north/south runway was added in the early 1990s. The airport's recently adopted master plan distresses Ohio residents, since it calls for the creation of a third north/south runway.

The Cincinnati Airport has aggressively pursued noise reduction. Between 1991 and 1995 the airport spent for such programs twice the total spent by the second and third highest spending airports combined. Noise abatement measures have included sound insulation and home purchase programs in Kentucky and modifications of flight procedures.

The airport's noise reduction plan has mollified Kentucky residents, while leaving Hamilton County residents unsatisfied. Ohio residents, particularly those located in the southwestern corner of Hamilton County, claim that airport planning and noise reduction measures favor Kentucky residents at their expense. They have expressed their frustration in a number of ways, including the installation of their own noise monitors and unfulfilled threats to boycott businesses of board members. They have not instigated litigation or taken any other steps that would seriously affect the airport's growth.

Airport management denies that the airport's noise mitigation and abatement plans favor Kentucky residents over Ohio residents. According to the airport's Deputy Director of Aviation, Ohio residents have not

been included in sound insulation and buy-out programs because they fail to meet the FAA's requirements for participation in such programs. In addition, several noise abatement procedures are in place to reduce noise in Ohio. The air control tower directs departures on the north/south runways to the south, away from Ohio, except when wind conditions require otherwise. Departures between 10 p.m. and 7 a.m. are from the east/west runway.

The airport has in place an Aviation Noise Abatement Committee, which consists of fourteen representatives, including a chairman appointed by the airport board, nine members appointed by various Kentucky political subdivisions and four members appointed by various Ohio political subdivisions. Some Ohio residents feel that their representation is inadequate to allow them to impact decisions.

Regional complications—the ownership by one county government of an airport located in another and the lack of an ownership interest by the major city in the metropolitan area—have not hindered the airport's growth and development. There are several possible explanations for this situation. First, intense noise abatement measures have been directed at and apparently mollified the host community. Thus, accommodation has been reached with the community with the greatest power to obstruct expansion. Second, Cincinnati and Hamilton County in general have a very strong economic interest in a growing airport. In this respect their interests align directly with those of the airport itself in favor of well-planned expansion, and they are able to protect these interests adequately through their presence on the board. Regional conflict would be more likely if expansion and growth were being thwarted by communities in Kentucky.

In a sense Cincinnati is getting the best of all worlds— a first-class airport, mostly in someone else’s backyard.

CLEVELAND

Hopkins International Airport (Hopkins), which is owned and operated by the City of Cleveland, is located in the City of Cleveland at a point abutting the City of Brook Park.

Hopkins’ situation is in some respects very similar to that of New Orleans International Airport. It covers only 1700 acres. When it was built, it was surrounded by farmland, and the town of Brook Park had a population of 1,122 residents. Today Brook Park has 22,000 residents and the airport is hemmed in by homes, businesses, and industry.

In 1992 the City of Cleveland announced an airport expansion plan that called for the lengthening of one runway and the construction of two others on land located in Brook Park. The proposal would have required the demolition of the International Exposition Center (I-X Center), a privately owned development that is a major generator of tax revenues and jobs for Brook Park. It also called for the relocation of the Aerospace Technology Park.

Brook Park immediately objected to the plan and made it clear that the demolition of the I-X Center was something it would not tolerate. In response, Cleveland redrew its plans so that they would not immediately threaten the I-X Center. It refused, however, to guarantee that the I-X Center would not be eliminated in future expansion. Brook Park found this state of affairs unsatisfactory. In 1993 it amended its zoning ordinance to require that Hopkins comply with the Brook Park master plan, to impose noise and land use restrictions, and to require Cleveland to obtain a

conditional use permit before constructing a runway. Cleveland filed suit challenging Brook Park.

In 1995 a federal district court held that Cleveland had to follow Brook Park’s zoning and other municipal requirements, including the conditional use requirements, in any plan to extend the runways or improve the airport. Appeal was stayed pending negotiation of a settlement.

The court ruling was critical. It made clear that Cleveland would have to negotiate with Brook Park, either immediately or when it became necessary to obtain a conditional use permit. In 1996 the mayors of Cleveland and Brook Park appointed a panel to conduct negotiations and to deliver recommendations. The committee reached an agreement that included property swaps and financial payments.

In the spring of 1998 the two cities implemented the settlement agreement. The agreement allows the City of Cleveland to build a new, 6,000-foot runway, which will eventually be expanded to 10,500 feet. Another runway will be extended to 12,000 feet. It also allows Cleveland to annex land within an “airport envelope.” (The runway lengths were later shortened under pressure from the community of Olmstead Falls.)

Cleveland in turn has agreed to cede over 85 acres of Cleveland-owned property to Brook Park, to leave the I-X Center alone, and to support construction of a new road along the airport’s southern perimeter, allowing Brook Park to develop the area for commercial and industrial uses. In addition, Cleveland transferred a two-mile commercial and industrial corridor to Brook Park. Under the terms of the settlement Brook Park will pay Cleveland 3.75 million dollars, and Cleveland will pay Brook Park 8.75 million dollars.

During the four years of strife, various suggestions were made to help resolve the crisis. These included Cleveland's sharing with Brook Park tax revenues from the Aerospace Technology Park or establishing a joint building and taxing authority for development adjacent to the airport. Others suggested that the conflict should be resolved at a regional level, with the Cuyahoga County Planning Commission or the Northeast Ohio Areawide Coordinating Agency, a regional transportation planning body, serving as a forum for working out a compromise. The suggestion was rejected by the mayors of Cleveland and Brook Park.

In the fall of 1998 a task force formed by the Greater Cleveland Growth Association (Growth Association), the area's equivalent of a chamber of commerce, issued a report indicating that the expansion negotiated by Mayor White of Cleveland was inadequate. The Growth Association concluded that the planned expansion would suffice only until 2010, at which time serious delays would start occurring. In their view, a second new runway would be needed by that year and a third one by 2020. The mayor maintains that service will be adequate until 2015.

Finding a place for the additional runways presents a large problem. The airport is ringed by the I-X Center, NASA Lewis Research Center, and a business park currently under construction. Another business park is in the planning stage. A committee of corporate and political leaders from Cleveland and Brook Park has been formed to determine how a second new runway can be added.

COLUMBUS, RICKENBACKER AIRPORT

Rickenbacker International Airport is part of a multi-modal international cargo center, developed from a closed military base.

Most of the airport is located in Franklin County, with one runway extending into neighboring Pickaway County.

The airport is owned and managed by the Rickenbacker Port Authority. Eleven board members are appointed by the County Commissioners of Franklin County.

Airport management reports no particular intergovernmental problems and has no particular institutional framework that encourages cooperation. Rather, they attribute cooperation to a perceived common interest in making the airport work.

Greater Columbus Inland Port, a public-private partnership established by business leaders in partnership with the airport, the City of Columbus, and Franklin County, helps direct marketing and business development at the airport.

Rickenbacker and Port Columbus International, Columbus' passenger airport, are owned by different entities. Although both are port authorities, Rickenbacker was established by Franklin County. The City of Columbus established the Columbus Airport Authority, and the mayor appoints its board members.

DALLAS/ FORT WORTH

Dallas/Fort Worth International Airport (DFW) is a municipal airport owned and operated jointly by the Cities of Dallas and Fort Worth pursuant to a joint venture agreement. The joint venture was formed after the voters of Dallas County turned down a proposal for a regional authority. Prior to the opening of the airport in 1974, Dallas and Fort Worth had maintained two separate airports.

DFW is located primarily in the cities of Grapevine, Irving, and Euless, which annexed the property on which the airport was to be located. A small portion is in Fort Worth.

The joint venture agreement, among other things, defines the powers and duties of the Dallas/Fort Worth International Airport Board (DFW Board), creates the joint airport fund, and provides for the construction and operation of DFW. It provides for an 11-member board. Seven members must be residents of Dallas, and four must be residents of Fort Worth. They are appointed by the cities' respective city councils.

In 1971 the DFW Board issued its original master plan through 2001. It was approved by the host cities, each of which allowed construction in accordance with the plan. By 1987 DFW had become the second biggest airport in the world. The DFW Board proposed an expansion program that included new runways, taxiways, aircraft holding areas, and other facilities.

After the expansion was announced, the three host cities enacted zoning ordinances that required the DFW Board to submit revised site plans and environmental impact statements in order to obtain special governmental use permits. The DFW Board refused to submit its expansion plans and filed suit. The host communities countersued.

The main issues before the court were whether federal law preempted local land use regulations with respect to airports, whether the power granted to the DFW Board under the Municipal Airports Act preempted the local zoning ordinances enacted by the municipalities pursuant to their home rule provisions, and whether the DFW Board had the power of eminent domain in the host cities. At issue was

property onto which the airport desired to expand, as well as property that was already a part of the airport.

The Court held that Congress had not pre-empted local land use regulation. It also held that the Texas Municipal Airports Act, which gave joint airport boards broad-based powers to acquire, construct, maintain, and operate airports inside and outside of their owner cities' municipal boundaries, did not deny non-owner cities within whose boundaries the airport was located the power to zone and otherwise control land use within the airport. The court also held that the Cities of Dallas and Fort Worth did not have the power to condemn the non-owner cities' streets in expanding the airport.

In response to the court ruling, the Texas legislature amended portions of the Municipal Airports Act to give airport boards exclusive powers, including the power of eminent domain, over territory within their boundaries as they might be expanded. The amendments also prohibited non-owner cities from enforcing zoning or other ordinances purporting to regulate the use or development of airport property.

The cities again sued, arguing that the bill unconstitutionally transferred self-government power from one home rule city to the other. The courts upheld the constitutionality of the law. The expansion was able to proceed.

Dallas, Fort Worth, DFW, and numerous airlines are now involved in lawsuits over expansion of flights out of Love Field in Dallas. Fort Worth filed suit against Dallas in 1997 after Congress loosened the Wright Amendment, the law that imposed perimeter rules on flights from Love Field to protect the then-fledgling DFW. The changes allow DOT to certificate jets modified to carry 56 or fewer passengers to fly nonstop out of

Love Field to any destination and add Arkansas, Kansas, and Mississippi to four other states open to nonstop service.

Fort Worth contends that opening Love Field to long-haul service will violate contracts and bond covenants that the cities signed in 1968 as partners in DFW. Dallas claims that it is powerless to ignore Congress' changes for Love Field. In response to the dispute, Senator Kay Bailey Hutchison has proposed the formation of a regional authority to coordinate North Texas airport operations.

Despite the existing dispute over the expansion of Love Field, DFW serves as a successful example of regional coordination in several respects. First, the formation of the joint venture allowed the Dallas/Fort Worth area to consolidate its resources in the promotion of an airport. The success of the venture is measured by the fact that DFW is today the second largest airport in the United States. Second, the critical and potentially crippling jurisdictional problems that arose from the airport's location were solved by legislative fiat modifying local governance. While the solution cannot be characterized as cooperative, it provides a useful and effective model for resolving differences in a way that allows airport expansion in jurisdictionally complex situations.

DENVER

Denver International Airport (DIA), which opened in 1995, is owned and operated by the City and County of Denver. It is connected to Denver only by a 12-mile long expressway. It is otherwise surrounded by the Counties of Arapaho and Adams and the City of Aurora.

DIA, the first airport to be built since DFW, replaced Stapleton Airport, a notorious choke point in the nation's aviation system. Stapleton, then the nation's fifth busiest airport, was surrounded on three sides

by development and on the fourth by the Rocky Mountain Arsenal, a site which has been called the most contaminated in the United States.

In 1979 the Denver Regional Council of Governments, whose members include eight counties and 39 of the 45 cities in the Denver region, initiated a site study for the airport. It concluded that the best alternative was to expand the existing Stapleton Airport into the Rocky Mountain Arsenal. The recommendation came to naught for two reasons: first, property owners in the nearby towns brought litigation over noise and safety issues, asking that the airport be closed; and second, Adams County, in whose jurisdiction the Rocky Mountain Arsenal is located, manifested intransigent opposition.

Adams County and Denver in 1984 began considering other alternatives. In 1985 they entered into a Memorandum of Understanding which provided that a new airport would be located to the east of the Rocky Mountain Arsenal on land to be annexed by the City.

In 1988 Denver and Adams County entered into intergovernmental agreements with respect to the new airport. Pursuant to the agreements, and after the approval of Adams County voters, Denver annexed 43.3 square miles of Adams County land. The annexed territory included the site for the airport; a transportation corridor for roads connecting the site to the interstate; and land at the ends of the runways for noise, safety, and other airport purposes. The agreement also addressed runway configuration, flight corridors, and anticipated noise impacts of the new airport. It required Denver to install noise monitors, meet certain noise level standards, and made it liable for fines of \$500,000 per incident if its noise control efforts failed.

The agreement also addressed land use matters. It allowed Denver to acquire residential development rights within the noise-impacted area around the airport. It also provided that as a condition to any enforcement of alleged violation of noise restrictions, Adams County and the appropriate municipalities had to adopt land use restrictions on residential development within such noise area.

The agreement, among other things, required Denver to pay compensation to two school districts for the loss of property taxes payable to each district as a result of their inability to impose property taxes on the annexed land.

The land annexation was submitted to the voters of Adams County pursuant to a Colorado law that prohibited Denver from annexing land without voter approval of the governmental unit whose land was the subject of the annexation. Adams County voters, attracted by the prospect of additional tax revenues and assurances that the inter-governmental agreements had solved the noise problems, approved the annexation.

DIA opened in 1995, after significant delays and astronomical cost increases.

Interestingly, despite the remote location, citizen approval, and the intergovernmental agreements, noise immediately emerged as a major issue. An Airport Coordinating Committee made up of Adams County Commissioners and representatives of nearby municipalities was set up to ensure that Denver lived up to its word on noise issues.

After the opening of the airport, DIA had the highest number of noise complaints in the United States. (The figure may present a somewhat distorted picture, since one household alone filed over 4,376 complaints in a quarter.) Noise violations were found at 101 of the proposed monitoring points during the first year of the airport's operation.

After changes in flight patterns, the number of complaints decreased, with the number of complaining households falling by two-thirds for the period September to November 1996, as opposed to the comparable period in 1995. Violations were reduced to seven by the second year, leaving Denver exposed under its agreement to claims for 3.5 million dollars in fines.

Noise-related lawsuits also followed the opening of the airport. Several property owners filed "taking" lawsuits. Adams County commenced a suit under its agreement, claiming 3.5 million dollars for noise violations. DIA has indicated that the suit was to be expected as part of the negotiation process, but that talks have remained open and friendly. Negotiations are being expanded to include water pollution and a proposed sixth runway that is opposed by Adams County. A study on the issue of the sixth runway is being touted as impartial because Denver and its neighbors came together to pay for it.

At one point in the expansion process, Representative Frank Wolfe, the then-designated chair of the Transportation Subcommittee of the House Appropriations Committee, indicated that federal aid for DIA was in jeopardy unless Denver considered letting a regional authority run the project. The City responded that it had no intention of surrendering the airport, and the proposal came to naught.

HARRISBURG

The Harrisburg International Airport (Harrisburg Airport) and a reliever airport are owned by the Susquehanna Area Regional Airport Authority (Susquehanna Authority). The authority has 15 members: three each from the Counties of Dauphin, York, and Cumberland; two each from the Cities of Harrisburg and York; and one each from two townships. It is operated under a management contract with BAA USA.

The Susquehanna Authority was formed in 1997 to receive the two airports from the commonwealth of Pennsylvania. The transfer capped nearly 25 years of discussions among the Department of Transportation for the Commonwealth and local governments and businessmen. The discussions had been precipitated by concern in the surrounding communities over the commonwealth's rather neglectful management of the airports and the negative impact on economic development. Transfer was complicated by serious economic and environmental problems associated with the airports. Prior to the divestiture, the Commonwealth made significant investments to address these issues.

In 1981 The Pennsylvania Economy League issued a study and analysis which recommended that Harrisburg Airport should be regionally owned and operated through a joint regional authority. It reaffirmed this conclusion in a 1985 update.

Among the reasons cited for regional operation by the Pennsylvania Economy League were the commonwealth's past mismanagement of the airport, inequities in funding attributable to the disproportionate application of state aviation revenues to Harrisburg Airport's operating deficits, the large stake of the south central community as a whole in the airports, that community's self interest and moral obligation to provide its own air services if it were able to do so, and the right of the community to participate in the decision making process of a facility with a strong economic influence on the community as a whole.

In recommending that the airport be transferred to an authority rather than operated as a department or unit of a local government, the Pennsylvania Economy League cited inherent limitations in operating an airport within a local government.

These include limitations which arise out of the basic conflict between the powers required for successful conduct of a business enterprise and the powers that can be legally delegated for such operations; the difficulty of achieving continuity of policy with changing political administrations; the general lack of incentives for vigorous development of revenues particularly in the all important terminal building area; and the frequent indirect, if not direct, political pressure on airport decisions.

The Pennsylvania Economy League indicated that authorities are able to overcome most of these limitations. In addition, they are useful devices for spreading the management and financing responsibilities of an undertaking over an area which includes several political jurisdictions.

The Commonwealth, in supporting the divestiture, indicated that the operation of businesses such as airports were non-core functions of state government; that because airports served an important entrepreneurial function for the region, regional management had a substantial stake in its development; that regionalization would make the airports more a part of the fabric of the communities they serve; that divestiture would produce better relations with neighboring communities due to feelings of ownership and potential for an increased tax base for the region; that those who used and lived around the airport were more likely to feel ownership if members of the region owned and operated the airport; that local control of airport facilities would permit greater integration of airport development with economic development initiatives of local government entities and the local private sector; and that divestiture would create the possibility of using underutilized airport real estate in an entrepreneurial manner.

MINNEAPOLIS-ST. PAUL

The Minneapolis-St. Paul International Airport (MSP) is located in Hennepin County and abuts the Cities of Richfield, Eagan, Mendota Heights, Bloomington, Minneapolis, St. Paul, and Bloomfield. It and six smaller airports are owned and operated by the Metropolitan Airports Commission (MAC).

MAC was formed by the Minnesota Legislature in 1943 to end airport rivalry between the Twin Cities. At that time the Minneapolis and the St. Paul airports were transferred to MAC, and MAC was given jurisdiction over all airports owned by it and over all aeronautical activity within a 25-mile radius of each of St. Paul's and Minneapolis' city halls. The jurisdiction was later expanded to 35 miles, an area that approximates the seven-county metropolitan area. Its stated purposes include developing the full potential of the metropolitan area as an aviation center and minimizing noise impact through noise abatement, land use controls, and other measures.

MAC reports directly to the governor and the legislature. It has broad powers, including the power to acquire land within the metropolitan area by condemnation. The power extends to property owned by other governmental entities and to property already dedicated to a public use. MAC can also acquire other airports; but in the case of municipal airports (other than the two originally acquired by it), the consent of the proprietary municipality is required.

MAC has taxing power in a seven-county area, but it has not exercised the power since 1969. State zoning laws addressing zoning around airports supersede local ordinances.

MAC originally had a nine-member board, with four members each from Minneapolis and St. Paul. These included the two mayors, a member of the Minnesota Park

Board, one councilman from Minneapolis, two councilmen from St. Paul and two citizen commissioners. The ninth, who served as chairman, was appointed by the governor from a noncontiguous county. The idea was to provide for equal representation between the two rival cities, with an outsider as a tie-breaker and moderator.

A thoughtful 1971 article on MAC's governance observed a number of weaknesses in the then-existing structure. These included the presence of too many elected officials; the representation of groups, such as the Park Board, whose presence was anomalous; and the absence of suburban representation.

With respect to the last, the author observed that 60 percent of the metropolitan area population lived outside the Twin Cities; that many of the passengers are suburbanites; that a large share of general aviation aircraft are used by suburbanites; that a large percentage of freight is destined for the suburbs; that five of the airports are located outside the Twin Cities; and that modern airports seriously impact the surrounding areas and land values with aircraft noise, air pollution, surface traffic, jobs, sewerage, and land development.

A number of bills were introduced in the Minnesota legislature in 1969 to add suburban representation. In 1973 legislation was passed that expanded the MAC to include representatives of the seven-county metropolitan area. In 1987 the board was expanded again, this time to include representatives from the entire state.

MAC now consists of a chairman and 14 commissioners. The mayors of St. Paul and Minneapolis are ex officio members and can designate representatives to serve. The governor appoints eight commissioners to represent specific metropolitan districts and four others from Greater Minnesota (two

from cities with commercial air service and two from cities with general aviation airports). The governor also appoints the chairman, who can reside anywhere in the state.

Despite its jurisdiction over aeronautical matters in the metropolitan area, MAC does not operate without checks. In 1969 the state legislature created the Metropolitan Council with planning authority over the seven-county metropolitan area. The legislature provides for a sharing of authority between metropolitan agencies (such as MAC) and local government units. Standards and criteria developed by the regional council are adopted and enforced by the local government units.

The council has 17 members representing each of the 6 council districts in the metropolitan region. Candidates are nominated by a seven-member nominating committee appointed by the governor. The governor is not bound by the committee's recommendations.

The Metropolitan Council has the following authority with respect to airports:

- to develop a metropolitan development guide that encompasses, among other things, the necessity for and location of airports;
- to adopt a long-range comprehensive policy plan for transportation, airports, and wastewater treatment that conforms to the policies, purposes, and goals of the development guide; and
- to review comprehensive airport plans and to suspend indefinitely plans that do not conform to the development guide.

The Metropolitan Council appoints a nonvoting member to the MAC Board.

The Metropolitan Commission soon exercised its suspension power. In 1969 it rejected, as inconsistent with the Metropolitan Development Plan, a plan submitted by MAC for the development of a second airport. Expressing concern that the then-existing Airport Zoning Act, which gave MAC zoning authority over aircraft hazard areas, would not adequately protect the population from noise, it recommended that MAC and the Commission sponsor legislation to assure proper zoning and developmental controls around airports.

As a result of this initiative the Metropolitan Commission was given authority to draw up criteria and guidelines for land use development within a three-to-five-mile radius of any major, new airport site. The purpose of the criteria and guidelines was to protect property from noise and to protect natural resources. Local governments were required to adopt controls in accordance with commission criteria and guidelines. The controls were to be very comprehensive, covering not just zoning, but also subdivision regulation, the official map, and housing and building codes.

To minimize competition by local governments for land uses that generate significant tax revenue, the act also provided for all local government units within an airport development area to formulate a plan for sharing of property tax revenues in the airport development area. An 80 percent majority was required for the plan to become effective.

MSP, like other airports, has had its share of noise-related lawsuits. In 1996 MAC had the second-highest number of complaints in the country. In 1992 activists lost a suit filed in 1969 alleging that noise had reduced property values. In 1993 suit was brought by two groups to compel the airport to comply with state noise regulations. Ultimately the Minnesota court held that federal law preempted the regulations.

MAC for decades considered the possibility of building a second airport. In 1989 the state passed a law mandating a “dual track” process of airport planning to determine whether to further develop MSP or to build a new airport. The state-mandated procedures required the simultaneous preparation of a comprehensive plan for a remote site and the development of a long-term plan for the existing site. The legislature also passed laws, based on the recommendations of the Metropolitan Council, to protect the target area from conflicting development and land speculation.

Two public groups were formed to assist MAC in the development of a long-term comprehensive plan for the existing airport by reviewing six options. One group, the MSP Airport Planning Task Force, was a broad-based group composed of local, state, and metropolitan officials. They provided a sounding board for the work in progress. The MSP Interactive Planning Group consisted of elected officials from communities adjacent to the airport. That group’s purpose was to help determine off-site impacts and potential mitigation measures.

The Task Force recommended a north/south runway on the west side and a west terminal complex. The plan was approved by MAC and sent to the Metropolitan Council and the legislature to be considered as part of the dual track process.

In 1996 the dual track study was completed, and the expansion of the existing airport was recommended. It was determined that building a new airport would cost 2.2 billion dollars more than expanding the present site and would yield the same economic benefits. According to the report “it was apparent from the start that the possibility of a new airport was driven more by the politics of airport noise than by the official

rationale—concern about the present airport’s ability to accommodate air travel growth.”

In 1996 the legislature passed a law stipulating that the Metropolitan Council could not require a local government to take zoning or land use actions to preserve land for a new airport. It also passed a law requiring MAC to enter into a contract by 1997 with each city that would be impacted by the airport expansion. The contract was to specify that the new runway would not be built without the affected city’s approval. If MAC failed to enter into such contract and the cause was its failure to negotiate in good faith, MAC was required to spend 100 percent more on noise abatement than it had the year before.

After the expansion decision, the airport set up a committee to guide development of a noise mitigation plan to address issues arising from the planned expansion. It included representatives of MAC, the Metropolitan Council, and Northwest Airlines, as well as the mayors of eight noise-impacted communities.

In response to the proposed expansion, the City of Richfield, which would have to give up 400 homes to make way for the runway, brought suit to stop it, alleging that the noise impact had not been sufficiently studied. Richfield agreed to allow construction to continue while it held discussions with MAC. The parties agreed that the Metropolitan Council would decide the matter if mediation failed.

Subsequently the City of Richfield submitted to MAC a proposal for a 200 million dollars redevelopment of the part of the city along the airport boundary. The plan calls for creating a noise buffer by replacing 500 homes and 500 apartment dwellings with commercial establishments and townhouses that would supposedly be more impervious to noise.

The Department of Wildlife has asked the airport to purchase for it 4,000 acres of new wildlife habitat to replace a portion of a refuge that it says will be negatively impacted by the expansion.

The airport director thought that reporting to the state had several advantages, mainly independence and priority of zoning. He thought that the authority provided a lot of distancing from politics, as did the large board. The chairman of the board thought that being a state agency was helpful because of the multi-jurisdictional aspect of the airport.

Minnesota's metropolitan approach to airport ownership and management is unusual in the United States. Although it has not insulated MAC from the problems with neighbors faced by other airports, such as lawsuits and complaints over noise issues, it has provided a framework in which the community as a whole makes the decisions affecting the region.

Its independence as a self-funded authority has, however, frustrated noise-control activists, who find it difficult to bring political pressure to achieve their goals. MAC has been criticized by airport neighbors for more than 25 years for inadequately dealing with noise. It has also been criticized for adhering to the letter of the law in its relations with noise-impacted parties and for not making any special efforts to inform or consult with individuals and organizations which respect to decisions that might vitally affect them.

Several aspects of the Minnesota framework are worthy of further consideration. First, as in the case of DFW, the state intervened to force local coordination and consolidation of resources. Second, the composition of the board was changed over time to reflect the movement of the population from the city to the suburbs. Recognizing the airport's

regional impact, the board was reconstituted to represent the entire metropolitan area. Third, the oversight of the Metropolitan Council has acted both as a check (e.g., halting relocation) and as positive force by providing a broad-based forum for evaluating and creating community consensus with respect to airport issues. Fourth, the use of a coordinated, dual-track evaluation process to guide decisions as to airport placement is more sensible than separate, competing studies like those undertaken by the City of New Orleans and the State of Louisiana.

NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey (Port Authority) operates three airports: John F. Kennedy International Airport (JFK) in Long Island, LaGuardia Airport in Queens, and Newark International Airport in New Jersey.

The Port Authority was established in 1921. The port district covers approximately 1,500 square mile in both states, centered around New York Harbor. The agency is authorized and directed to plan, develop, and operate terminals and other facilities of transportation and commerce and to advance projects in the general fields of transportation, economic development, and world trade.

The governors of New York and New Jersey each appoint six commissioners to the agency's board of governors, subject to approval of the respective state senates. The governors retain a veto right, and the Port Authority may proceed only with those projects that the two states authorize.

The relationship between the Port Authority and the City of New York has been very hostile since Mayor Giuliani assumed office in 1994. The underlying source of contention is the mayor's perception that the Port Authority is taking money from

New York to subsidize New Jersey projects and commuters to the tune of 189 million dollars a year.

One sore point concerns the subsidization by the Port Authority of riders on PATH, the mass transit rail system from New Jersey. PATH riders pay only 30 percent of the cost of a ride, while subway riders in New York pay more than 60 percent of the cost of their trip.

Another sore point concerns the allocation of construction moneys. New York State has been receiving 55 percent of the port authority's construction money, although, according to New York City, New York accounts for 72 percent of the population and 77 percent of the economic activity in the port authority area. The Port Authority has modernized Newark International Airport and enlarged the ports in Elizabeth and Newark, while the air and port facilities in New York have deteriorated.

The complaints on allocation are apparently not unfounded. The executive director acknowledged in 1997 that the Port Authority had favored New Jersey for too long. Over the next five years investment in JFK and LaGuardia will be five times investment in Newark. Plans include new roadway systems and one billion dollars worth of renovations in the international arrivals terminal.

Disagreements came to a head over the terms of the lease for JFK and LaGuardia. The lease agreement, which was entered into in 1965 for a term of 50 years, contains a complicated formula for calculating lease payments. Under the formula, payments fell from 87 million dollars a year in 1987 to the minimum payment of three million. They are expected to stay at that amount until the lease expires in 2015, at which time the City of New York can reclaim the land and all

improvements on it. By contrast, the Port Authority leases Newark Airport for 18 million dollars a year.

The dramatic decline in lease payment is due in part to expenses and investments made by the Port Authority pursuant to a poorly executed renovation plan announced for JFK in 1987. As fall-out from the project, which was scuttled, New York was left with 100 million dollars of expenses from unutilized and aborted improvements. These became offsets to revenues under the lease formula.

In response to complaints from New York, the Port Authority indicated a willingness to renegotiate the lease. In 1994 New York City broke off lease renewal talks with the Port Authority, indicating that it was only willing to negotiate a transfer of the airports back to the control of the City. In 1995 the City demanded arbitration by a panel of certified public accountants of certain matters involved in the determination of the amount due to the New York City as rent and requested an award of back rent in excess of 400 million dollars. A court eventually ordered the reluctant Port Authority to submit to arbitration.

In 1996 Mayor Guiliani proposed breaking up the Port Authority, calling on New York State to take over some functions and for the creation of a new authority to operate New York City's airports. The proposal was the inverse of one made by Governor Cuomo in 1993, in which he called for the New York City to sell the airport land to The Port Authority in order to help ameliorate New York City's fiscal problems. That proposal was rejected as a call for a fire sale, with New York estimating that the land was worth as much as two billion dollars.

In 1998 Mayor Guiliani threatened to hold an early referendum on the lease renewal. In response to calls for the break-up of the

Port Authority, New Jersey's governor has threatened to block improvements at LaGuardia.

In November 1998 the Newark City Council filed a lawsuit charging that the Port Authority owed Newark millions in back rent because of "gross accounting irregularities." Newark's mayor called the lawsuit "unwarranted, frivolous and irresponsible."

In short, all is not well with regionalism at the Port Authority of New York and New Jersey.

ONTARIO INTERNATIONAL AIRPORT, LOS ANGELES

Ontario International Airport (which is not Los Angeles' main airport) is located about 45 miles outside of the City of Los Angeles in the City of Ontario in San Bernardino County. The City of Ontario sold the airport to Los Angeles, which owns and operates it and several other airports.

When it comes to airport expansion, Ontario's response has been the opposite of that of many host cities. In the early 1990s it pushed hard for Los Angeles to proceed with expansion plans for a larger terminal at Ontario Airport and, frustrated by a decade of delay, offered to buy back the airport and do the construction itself. The terminal was eventually built by Los Angeles.

Relations between the airport and the City of Ontario hit a rough spot in 1997 when city officials learned through the grapevine of a major expansion plan and possible third runway at Ontario. City officials, after making an offer on 46 acres of land east of Ontario Airport, learned that the airport had been negotiating to purchase the site as well as 214 acres surrounding it for future expansion. The plans had never been revealed to the city, which has to purchase any land on the airport's behalf. In connection with the resolution of the dispute, an

advisory panel was established to allow Ontario to provide the Los Angeles board of airport commissioners with "advice and recommendations" on issues pertaining to the airport.

The airport gets help from Friends of Ontario Airport, an independent group of business people founded in 1963 to promote the airport. Ontario's public relations director said the group has been extremely useful in airport public relations and helpful in letting the airport know of people's concerns.

The Ontario Friends group has become a national model. Burbank formed a group in the 1970s to get a pro-airport message out. A similar group at John Wayne Airport in the 1980s helped to get a 319 million dollars terminal built.

PORTLAND, OREGON

Portland International Airport (Portland Airport) is located in the City of Portland and the County of Multnomah. It is owned and operated by the Port of Portland (Port). The port's area of jurisdiction includes three counties.

Policies are set by a nine-member commission appointed by the governor and ratified by the state senate. At least two members have to come from each of the counties in the port's area of jurisdiction.

The Port, founded in 1890 to dredge a canal, later acquired terminals and airports and built Portland Airport and its predecessor. Three smaller airports were acquired from municipalities or private owners.

The Port has taxing authority in the three counties, but the power has never been used for the airport. The Port also has the power to condemn property. It has no zoning power. Such power resides with the City of Portland in the case of the airport.

Portland Airport is mandated by the Oregon Legislature to facilitate air transport to and from Portland and the region. The mandate is supported through agreements by northwest legislators, including representatives of the State of Washington. The mandate requires the airport operators to run their operations like a business: maximizing revenues, minimizing expenses, and attracting more passengers and cargo.

An advantage cited for the authority structure is the flexibility to operate it as a business. A disadvantage of the maritime-air structure is that the airport competes for the overall attention of management.

As part of its noise abatement plan, the Port of Portland maintains an operational advisory committee with community representatives appointed by local governments. It also works with adjacent communities on land use adjustments. Plans under consideration include the construction of an engine run-up enclosure, which is expected to be operational in 2000, and the use of new departure routes to redistribute noise.

Although there are complaints from Washington state over noise related to the use of a north/south, cross-winds runway, Portland seems much less plagued by intergovernmental squabbling than other airports. This circumstance might be the case because there have been no recent major physical expansions. There was a major battle with Clark County, Washington, over a proposed expansion thirty years ago, which would have directed noise over that area. It ended when a court ruled that some of the land that was to be used was not in Oregon.

Alternative proposals for the development of the airport in the year 2020 and beyond were recently unveiled. The proposals would improve the situation for Washington

residents, who have been the source of complaints by eliminating the north/south runway.

SEATTLE

Seattle-Tacoma International Airport (Sea-Tac Airport) is located primarily in the City of SeaTac, midway between the cities of Seattle and Tacoma. It was built by and is owned and operated by the Port of Seattle (Seattle Port). Its boundaries are coextensive with those of King County.

The Seattle Port is governed by a five-member commission elected by the voters of King County. The port commissioners also sit as the board of directors of the Industrial Development Corporation of the Port of Seattle, which can issue tax-exempt revenue bonds to finance industrial development within the corporate boundaries of the Seattle Port.

The Seattle Port operates within a strong regional framework. An intergovernmental regional council, the Puget Sound Regional Council (PSRC), has authority over growth and transportation policy within a four-county area. The council is comprised of approximately 475 elected officials who represent four counties, three port districts, 58 cities, and two state agencies. Runway expansion plans of Sea-Tac Airport require approval of that body.

Sea-Tac Airport has been undergoing rapid growth. At the end of the 1980s it began to evaluate expansion options, including relocation to another site. Ultimately that option was rejected in favor of the addition of a third runway and other improvements at the existing airport site.

In 1996 the airport adopted a master plan calling for 1.7 billion dollars in improvements, the third runway. According to the annual report, the decision capped eight

years of extensive regional debate, study, and analysis involving airlines, other airport customers, local and regional policy makers, and communities.

In connection with its review of the airport's expansion proposal, the PSRC appointed a panel of noise experts to review the airport's noise programs. The experts concluded that the Seattle Port had not done everything within reason to minimize noise around the airport and recommended against changing the Metropolitan Transportation Plan to accommodate the expansion. The PSRC's executive council, instead of following the recommendation for rejection, approved incorporating the third runway into the regional master plan with conditions relating to noise mitigation.

The PSRC's membership followed suit with an 84 percent vote, weighted by population, in favor of the expansion. The conditions concerning noise mitigation were included in the approved plan.

The proposed expansion produced a number of lawsuits. The City of SeaTac, in which the airport is primarily located, filed two lawsuits on its own. Other cities around Sea-Tac Airport formed the Airport Communities Coalition (ACC), which filed another series of lawsuits to block the runway. The ACC legal actions included, among others, a suit against the Seattle Port and PSRC alleging that procedures were not properly followed in the review under Washington's growth management and environmental laws, an administrative appeal against the Seattle Port challenging the adequacy of its environmental impact statement, and a suit against the FAA for approving the proposal. The ACC lost its first two suits and the state court challenges to the environmental impact statement. Others are still in court. Despite the suits, construction has begun on the runway.

The ACC's lawsuits have been expensive. By June 1998 the Seattle Port had spent 2.5 million dollars defending against the suits. ACC projected that it would have spent 7.5 million dollars by the end of 1998.

The Washington Growth Management Act has been successfully invoked to facilitate the airport's expansion plans. The Central Puget Sound Growth Management Hearings Board ordered the City of Des Moines to amend its comprehensive plan to allow runway construction, which had been judged a regional priority and an essential public facility. The City subsequently made changes, which the board determined were inadequate. It indicated that it would seek sanctions if Des Moines failed to comply with its order. Des Moines ultimately amended its comprehensive plan to comply with the order.

Although the Seattle Port contested at every turn the actions of the ACC, it settled with SeaTac, the host city, to allow the expansion to proceed. The complicated agreement provides a fascinating outline of the kinds of issues that ultimately need to be confronted in the New Orleans context.

In the interlocal agreement, the City of SeaTac and the Seattle Port agreed to engage in cooperative comprehensive planning to address issues related to the port's airport properties and activities and the city's economic development, land use, and related goals. The objective of the planning is the recognition of the port's master plan in the city's comprehensive plan and vice versa. The scope of the planning includes a land use and zoning component for port properties, for non-port properties adjacent or near to port-owned properties, and for those within the 65 dnl check noise contour; a surface water management element; critical area regulations; a transportation element to

include coordinated strategies for parking, transit, parking taxes, impact fees, and other mitigation; a capital facilities element implementing and coordinating the port's and city's master plans; and additional elements addressing joint economic development.

The interlocal agreement also contained a community relief package, which included monetary payments, a joint study of a city center, joint cooperation for economic development, a joint transportation study, the sharing by the Seattle Port of costs to mitigate the impact of increased airport traffic on city streets, beautification measures, provisions addressing parking, and the implementation of the airport's land acquisition program.

The agreement is for a ten-year term with automatic renewal for five-year periods, subject to termination in accordance with stipulated procedures. It provides for the dismissal of existing litigation and sets forth procedures for dispute resolution. It contemplates and provides the basis for establishing teams to work on a long-term basis for the implementation of the provisions of the agreement.

Other points of cooperation include the Sea-Tac Economic Partnership through which the Seattle Port and City of Seattle have agreed to work to identify and pursue economic development opportunities for port properties near the airport which are in the jurisdiction of the City of SeaTac.

WASHINGTON, D C

National Airport and Dulles International Airport were transferred from the FAA to the Metropolitan Washington Airports Authority in 1987. The transfer was pursuant to a 50-year lease, providing for payments of at least 3 million dollars a year.

The impetus came from Elizabeth Dole, who as Secretary of the Department of Transportation decided that the federal government should exit the airport business. One of the major reasons was the need for capital development and Congressional refusal to make investments. In addition, the transfer allowed the airports to issue revenue bonds.

The Metropolitan Washington Airports Authority was created by an interstate compact between the District of Columbia, the State of Virginia, and the State of Maryland. There was consensus as to the need for the airports to grow. All the wrangling was over board composition. The original proposal was for a board with 11 members appointed as follows: two by the governor of Maryland (Maryland gets much of the noise impact from National), three by the mayor of Washington, five by the governor of Virginia, and one by the president. Two additional presidential appointees were added. Basically, there are five members from one side of the Potomac and five from the other, plus the presidential appointees.

APPENDIX C: AIRPORTS THAT CHANGED FORM OF GOVERNANCE

ATLANTA

See discussion in Appendix B.

BALTIMORE/WASHINGTON

In 1970 Baltimore/Washington International Airport was transferred from Baltimore to a joint city/state controlled authority because of doubts about Baltimore's ability to finance programs. The authority failed because the transfer terms included a lease payment to the City of at least 1.4 million dollars. The excessive outlay made it impossible to issue revenue bonds. In 1972 the airport was transferred to the state for 36 million dollars, an amount that was computed on the basis of the 15 million dollars that Baltimore had invested in the airport.

PORT COLUMBUS

Port Columbus International was transferred from the City of Columbus to the Columbus Airport Authority in 1991. The primary reason was to lessen bureaucracy, improve efficiency, and allow the airport to be more businesslike and responsive to the needs of the community. The transfer involved a transfer of assets for operation and use from Columbus to the authority, with a right of the authority to buy the airport upon paying to the city an amount equal to the outstanding airport-related indebtedness.

Payments made to the City of Columbus are based upon and limited to the amount needed to cover the costs of the city's general obligation, airport-related debt. They terminate upon repayment of all such debt.

INDIANAPOLIS

The Indianapolis International Airport is located in Marion County and abuts a part of Hendricks County. Some land has been purchased in Hendricks County as part of the airport's noise abatement program.

The airport, which was originally owned by the city, was transferred in 1962 to the Indianapolis Airport Authority. The authority's original board of four members was later expanded to seven members in order to provide a means of taking into account the interests of nearby residents. Of the seven members, five are appointed by the mayor for staggered four-year terms. One of these appointees must be from the townships which straddle the airport. Another member is appointed by Marion County officials, and a seventh is appointed by the Hendricks County Commissioners.

The airport's director of public affairs indicated that the board expansion initially prompted concern by some that the general welfare of three million people might suffer, as their interests would be subject to control by the more parochial interests of those who live near the airport. When the most recent noise abatement study was done, however, the Hendricks County and Decatur Township representatives were great contributors.

Indianapolis transferred daily operations in 1995 to a private management company, BAA USA (BAA). BAA was one of five groups, including the airport's then-existing employees, to submit proposals to run the airport. The proposals were reviewed and scored for the airport by an independent consulting firm. The privatization of the airport's

management reflects the trend in Indianapolis municipal government to privatize city services.

MILWAUKEE

General Mitchell International Airport (Mitchell) and a reliever airport are owned and operated by Milwaukee County. Mitchell is a medium hub airport serving Milwaukee and a large part of Wisconsin.

In 1991 the Wisconsin state legislature passed a bill directing the state Department of Transportation to study the establishment of a Milwaukee airport authority to sponsor the airports. The consultants hired to do the study considered the establishment of a county airport commission, the incorporation of the airports into the regional transportation authority, the creation of a sole-sponsor airport authority, and the creation of an airport authority to function as a co-sponsor of the airports with Milwaukee County. Although the consultants thought that the creation of an airport authority to function as the sole sponsor of the airports offered significant advantages, they considered the alternative not feasible because it would require Milwaukee County to relinquish virtually all control of airports—a change which had significant opposition and no support. Accordingly, they recommended pursuing the creation of an authority to act as co-sponsor with Milwaukee County, but only if and when a consensus in favor of such a transition had been developed within Milwaukee County. They recommended a multi-phase process to determine whether a consensus could be developed and, if so, to effect the transfer.

The plan envisioned a single-purpose entity, empowered to manage, operate, and develop the airports within the constraints of certain powers that would be retained by the county. The authority would be governed by a board that would include broad representation from the county and the

surrounding area. Under the proposal Milwaukee County would retain title to the land and buildings that constitute the airports. Certain actions would require approval of Milwaukee County. These included the acquisition of land, whether by private purchase or the exercise of the power of eminent domain; the authorization or approval of any master plan; airport layout plan or environmental impact statement to be provided to the FAA; and the proposed purchases of goods, services, materials, or lands that involved the expenditure of federal funds.

The consultants noted that a review of the operation and management of the airports had produced no evidence to suggest that the current system of governance had materially handicapped the management and development of the airports up to that point. They were apprehensive, however, that the existing form of governance would be less effective for managing future developments involving runway expansion and land acquisition. These would require the resolution of intractable conflicts among the airports' various interest groups, particularly those associated with the airports' key role in economic development and the rights of people living near the airport.

One particular concern was that the current system of governance created the opportunity for county supervisors representing Mitchell's affected residents, who are generally opposed to airport expansion, to exercise dominant control over airport policymaking. The dominance came through their over-representation on the governing Transportation and Public Works Committee. While effective representation of local residents was considered appropriate, their interests needed to be balanced against those of the larger airport service region. The system had no mechanism for this

balancing, thus perpetuating the risk that responsible plans for future development of the airport would not be implemented.

The report noted that the composition of any authority board would be a product of negotiations conducted during an implementation phase. It gave as an example a seven-member board, with four members appointed by the governor, three of whom could be residents of any county in the Southeast Wisconsin Regional Planning Commission Area. The Milwaukee County Executive could appoint two supervisors as members of the authority, one of whom could be from a district contiguous to an airport placed under the jurisdiction of the authority, subject to confirmation by the County Board of Supervisors. The seventh member could be appointed by the County Executive from the residents of Milwaukee County who were neither elected officials nor residents of a district contiguous to an airport.

PITTSBURGH

Pittsburgh International Airport (Pittsburgh Airport) is located in Allegheny County. At the present time it is owned and operated by the Allegheny County Department of Aviation.

In 1992 Pittsburgh Airport opened an elegant new terminal with a very successful air mall. The mall is operated by BAA (USA) pursuant to a private management contract. Despite its successful mall, the airport has lagged in attracting air cargo, international flights, and economic development in the airport's environs.

In October 1997 two county commissioners proposed creating an authority to act as a catalyst for economic development. In their view, development of the area around the airport was being hampered by the perception that Pittsburgh Airport had a political,

rather than a business, orientation. Because the protocol was satisfying politicians, businesses went elsewhere, despite the presence of a first-class airport.

The proposal called for the creation of a nine-member board. The county would continue to own the land and buildings and lease them to the authority. The conversion, which was expected to occur in April 1998, has been stalled by the politics it was supposed to avoid, with a dispute over the issue of who will be on its first board.

Leigh Fisher Associates did a study for Pittsburgh Airport on the merit of authorities vs. municipal ownership in which, according to airport personnel, it found that airport authorities are more efficient. In Pittsburgh's case, the move to an authority is also an attempt to deal with a very troublesome labor problem. As a result of the interaction of a county-wide seniority system with a county-wide lay-off, the airport had to replace its younger, high-tech electricians with older ones who were not trained to deal with the airport's sophisticated equipment. The authority is seen as a way around this problem.

Among the reasons cited for the switch to an authority are stability (the County Department of Aviation had five department heads in ten years), a greater ability to run the airport as a business, and a reduction of political interference in hiring and decision making. An offsetting consideration was the reduction in public accountability.

The *Pittsburgh Post Gazette* noted that, although a compelling case had not been made for an authority, the change would be progressive if it led to a contract with an experienced private management firm. The newspaper urged consideration of a wider based, multi-county authority for several reasons. First, the regional approach represents the most appropriate forum for

a truly regional asset, and second, airport planning would be enhanced by providing a seat at the table for nearby counties.

WASHINGTON, D C

See discussion in Appendix B.

SOURCES CONSULTED

INTERVIEWS

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MEETINGS

Joint Council Meeting, Kenner and New Orleans, 12.8.97

Joint Council Meeting, St. Charles Parish and New Orleans 1.27.98

Airport Task Force New Orleans and River Region Chamber of Commerce 10.7.98

MetroVision, Council of Governments 10.20.98

UNO Business Series 1998 Tourism and Hospitality Conference 7.14.98

Airport Inter-Council Committee 9.24.98; 10.28.98

Mayors' Airport Summit 10.30-31.98

BOOKS, BROCHURES, ARTICLES, REPORTS, TESTIMONY, AND GOVERNMENT DOCUMENTS

Axelrod, D., 1992, Shadow Government: The Hidden World of Public Authorities and How They Control Over \$1 Trillion of Your Money

BAA USA, Informational Brochure

Barclay, C., America's Future in Airport Infrastructure

Blackshear, D., 1998, The Development of Airport Infrastructure and Air Service to Support the Growth of Tourism in the New Orleans Region, Comments of David L. Blackshear Before the 1998 Tourism and Hospitality Conference, New Orleans, July 14, 1998

Bunnell, R., 1992, Is Your Airport a Pot of Gold?, Airport Magazine (May-June)
www.airportnet.org/depts/publicat/airmags/am5692/gold5692.htm

Cole, T., 1993, Zoning Control of Airport Expansion by Host Cities and the Battle Over Dallas/Fort Worth International Airport, 59 Journal of Air Law and Commerce

Commonwealth of Pennsylvania, Department of Transportation, Talking Points for Divestiture of Harrisburg International and Capital City Airports (undated)

Cook, B., 1997, Australia: On Top of Privatization Down Under, Airport Magazine
www.airportnet.org/depts/publicat/airmags/am91097/australia.htm

Cook, B., 1994, A New Solution to an Old Problem -- What to Do When the Arp Well Dries Up, Airport Magazine www.airportnet.org/depts/publicat/airmags/am111294/gafund.htm

Cooper, D., and Gillen, D., 1994, Measuring Airport Efficiency and Effectiveness in the California Aviation System, Research Report UCB-ITS-RR-94-17, Institute of Transportation Studies, University of California at Berkeley

Creswell, L., 1990, Airport Policy in the United States: The Need for Accountability, Planning, and Leadership, 19 Transportation Law Journal 1

DeLuca, J., 1995, Airport Finance Challenges for the Next Decade, Airport Magazine (May-June), www.airportnet.org/depts/publicat/airmags/am5695/fin.htm

Dempsey, P., 1992, Aviation Law and Regulation

FAA, Form of Airport Assurances

FAA, 1997 Aviation Capacity Enhancement Plan

Florida Airport Safety and Land Use Compatibility Study Commission, 1993, Effectiveness Evaluation of the 1991 Airport Safety and Land Use Compatibility Study, Commission Recommendations (1993)

Florida Airport Safety and Land Use Compatibility Study Commission, Report of Findings and Recommendations (1991)

Florida Department of Transportation, Office of Public Transportation, Aviation Division, 1994, Airport Compatible Land Use Guidance for Florida Communities, Final Draft

Fulton, W., 1998, More Airports Than We Need, Governing (June)

General Accounting Office, 1996, Airport Privatization: Issues Related to the Sale of U.S. Commercial Airports, T-RCED-96-82

General Accounting Office, Letter dated April 29, 1998 from Gerald L. Dillingham to the Honorable Roy Blunt entitled "Airport Financing: Projects Eligible for Federal Support That May Go Unfunded"

General Accounting Office, Testimony Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, "Domestic Aviation: Service Problems and Limited Competition Continue in Some Markets, Statement of John H. Anderson, Jr., Director, Transportation Issues, Resources, Community and Economic Development Division" (April 23, 1998)

General Accounting Office, Airport Privatization: Issues Related to the Sale or Lease of U.S. Commercial Airports, Report to the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives GAO/RCED-97

Goldsmith, S., 1997, *The Twenty-First Century City, Resurrecting Urban America*

Harper, D., 1971, *The Minneapolis-St. Paul Metropolitan Airports Commission*, 55 *Minnesota Law Review* 363

Hartsfield Atlanta International Airport, Airport Master Plan Newsletters (June 1996, June 1997, Nov/Dec 1997)

Hartsfield Atlanta International Airport, Runway Fact Sheet (Revised March 1998)

Indianapolis Airport Authority, General Outline of Agreement for the Operation and Maintenance of the Indianapolis International Airport Facilities

Indianapolis Airport Authority, Outline of Managed Competition Process

Indianapolis Airport Authority, Press releases dated May 11, 1995 and September 26, 1996

Isberg, G., 1972, *The Minnesota Airport Zoning Act*, *Urban Law Ann.* 69

Jacksonville Port Authority, Information Sheet

Kenton County Airport Board, Offering Circular for Revenue Bonds, Series 1996A (AMT) and Series 1996 (Non-AMT)

KPMG Peat Marwick, 1992, Executive Summary, Milwaukee Airport Authority Feasibility Study

Klein, A., Annotation, Power of Eminent Domain as Between State and Subdivision or Agency Thereof, or as Between Different Subdivisions or Agencies Themselves, 35 *ALR* 3d 1293 (1971)

Magee, S., 1996, Protecting Land Around Airports: Avoiding Regulatory Taking Claims by Comprehensive Planning and Zoning, 62 *J. Journal of Air Law and Commerce* 243 (1996)

Milwaukee County Commission for the 21st Century, 1996, Final Report

Nashville Airport, Briefing Paper (1998)

Ormsby, N., 1981, Baltimore/Washington International Airport—An Informal History, 1944-1981 (Monograph)

Pennsylvania Economy League, Inc. (Western Division), 1985, The Capital Area Aviation System—An Updated Analysis

Pennsylvania Economy League, Inc. (Central Division), 1985, PEL Comment, The Capital Area Aviation System—An Updated Analysis

Pennsylvania Economy League, Inc. (Central Division), 1981, Who Should Own and Operate Harrisburg International Airport?

Perlman, E., 1998, The Business of Government: Confusion on the Runway, *Governing* 54 (July)

Plavin, D., 1998, "Who Governs the Airport and Does It Matter", *The Voice of Airports* (June)

Poole, Jr., R., 1997, Airport Privatization Pilot Program (Reason Foundation)

Poole, Jr., R., 1995, How to Privatize Orange County's Airports (Reason Foundation)

Poole, Jr., R., 1994, Guidelines for Airport Privatization (Reason Foundation)

Poole, Jr., R., 1993, Privatizing Los Angeles International Airport: Analyzing the Alternatives (Reason Foundation)

Poole, Jr., R., 1991, The Public Benefits of Privatizing Logan Airport (Reason Foundation)

Port Authority of New York and New Jersey, 1996 Annual Report

Public Affairs Research Council of Louisiana, Inc., 1998, Louisiana's Sunshine Laws: Guaranteeing the Citizen's Right to Know

Regional Planning Commission, 1990, Southeast Louisiana Airport System Plan.

Rockett, R., 1986, Airport Noise: Did the Airport Safety and Noise Abatement Act of 1979 Solve the Problem?, 52 *Journal of Air Law and Commerce* 499

Ryan, T., 1998, The Importance of the Air Transportation Industry to the New Orleans Economy (June)

Sharp, L., Annotation, Construction and Application of Rule Requiring Public Use for Which Property Is Condemned to Be "More Necessary" or "Higher Use" Than Public Use to Which Property is Already Appropriated—State Takings, 49 ALR 5th 769 (1997)

Tomko-DeLuca, E, Annotation, Application of Zoning Regulations to Governmental Projects or Activities, 53 ALR 5th 1 (1997)

Wachs, M., and J. Dill, J., 1997, Regionalism in Transportation and Air Quality: History, Interpretation and Insights for Regional Governance, Working Paper UCTC No. 355 (The University of California at Berkeley)

Werlich, J., and Krinsky, R., 1982, The Aviation Noise Abatement Controversy: Magnificent Laws, Noisy Machines, and the Legal Liability Shuffle, 15 Loyola of Los Angeles Law Review 69

Wisconsin Policy Research Institute Report, 1994, The Privatization of Milwaukee County's General Mitchell International Airport, A Feasibility Study (written by R. Poole)

"Airport Agreement Prepares Cleveland for Take-off", Planning 25 (February 1998)

Testimony of David J. Roberts, President, BAA Indianapolis LLC and Chairman BAA Harrisburg, Inc. before the Aviation Subcommittee, Committee on Commerce, Science and Transportation, United States Senate, February 12, 1998

United States Census Report 1990

Proposed Transfer of Washington National and Dulles International Airports to a Regional Airports Authority, Hearing Before the Subcommittee on Governmental Efficiency of the Committee on Governmental Affairs, United States Senate, 99th Congress, 1st Session (July 10, 1985)

NEW ORLEANS INTERNATIONAL AIRPORT DOCUMENTS

Deloitte & Touche LLP

NOIA Financial Statements for the Years Ended December 31, 1997 and 1996 and Independent Auditors Report

Deloitte & Touche LLP

NOIA Financial Statements for the Years Ended December 31, 1996 and 1995 and Independent Auditors Report

G.E.C., Inc., Final Environmental Assessment for North Parallel East-West Taxiway Conversion at New Orleans International Airport Appendix G: Public Hearing, Comments, and Responses (April 1998)

G.E.C., Inc,

Draft Environmental Assessment for North Parallel East-West Taxiway Conversion at New Orleans International Airport (September 1997)

KPMG Peat Marwick

FAR Part 150 Noise Compatibility Program for New Orleans International Airport (1986-87)

KPMG Peat Marwick

Strategic Growth Plan for New Orleans International Airport (1990)

KPMG Peat Marwick
Final Report—Phase 1, New Orleans
Air Carrier Airport Site Selection Study (1990)

Leigh Fisher Associates
New Orleans Air Carrier Airport Site Selection Study
Phase II Presentation Materials
Summary Report-Phase II Site Evaluations
(December 1993)

Leigh Fisher Associates
New Orleans Air Carrier Airport Site Selection Study
Summary Report -Preliminary Airport Development Plan
(October 1994)

Mitchell & Titus, LLP
Strengthening the Operation of the New Orleans International Airport
October 19, 1998 Revised March 5, 1999

The Mumphrey Group, Inc.
Program Briefing Book, March 1998
Capital Facilities Program, New Orleans International Airport

New Orleans Aviation Board, Offering Circular, dated October 1, 1997

New Orleans Aviation Board, Offering Circular, dated February 12, 1993

City of New Orleans, Offering Circular, dated December 10, 1987

Grant Agreement for Development Project,
between the FAA and NOIA, executed March 16, 1998

Grant Agreement for Development Project,
between the FAA and NOIA, executed September 11, 1996

Settlement Agreement, executed on December 15, 16 and 21, 1994, among the City of
Kenner, the City of New Orleans, and the New Orleans Aviation Board

Airport Expansion Agreement by and between the City of Kenner, the Parish of St. Charles,
the City of New Orleans, and the New Orleans Aviation Board, dated as of October 17, 1995

Special Sales Tax Collection Agreement between the City of Kenner and the Jefferson Parish
Sheriff's Office, dated January 1, 1989

AIRPORT AGREEMENTS

Airport Lease Agreement between Albany County Airport Authority and Albany County, dated December 5, 1995

Airport Operation and Use Agreement between the City of Columbus and Columbus Municipal Airport Authority, dated as of September 23, 1991

Amended and Restated Joint Exercise of Powers Agreement among the Cities of Burbank, Glendale and Pasadena Creating an Agency to be Known as the Burbank-Glendale-Pasadena Airport Authority, dated as of September 15, 1991

Contract and Agreement between the City of Dallas, Texas, and the City of Fort Worth, Texas, dated as of April 15, 1968

Contract between the City of Los Angeles and the City of Ontario for the Joint Exercise of Powers in Relation to Ontario International Airport, dated October 18, 1967

Divestiture Agreement between the Pennsylvania Department of Transportation and the Susquehanna Area Regional Airport Authority, dated September 25, 1997

Intergovernmental Agreement of Annexation, dated April 21, 1988, between the City and County of Denver and County of Adams

Intergovernmental Agreement of a New Airport, dated April 21, 1988, between the City and County of Denver and County of Adams

Interlocal Agreement between the Port of Seattle and City of SeaTac, dated September 4, 1997

Memorandum of Agreement among the City of Austin, the FAA and Airlines that Provide Commercial Passenger Service to the Austin Airport (1997)

Memorandum of Understanding among the State Aircraft Pooling Board, General Services Commission, Texas National Guard, Texas National Guard Armory Board and the City of Austin

1968 Regional Airport Concurrent Bond Ordinance Adopted by the City Councils of Dallas and Fort Worth, Texas, effective as of November 12, 1968

LEGAL MATERIALS

Codes, Regulations, and Statutes

49 U.S.C.A. Section 47100 et seq.

Executive Order 12803 of April 30 1992, Infrastructure Privatization, Vol. 57, No. 86, Federal Register 19063, (May 4, 1992)

FAA, Proposed Policy and Procedures Concerning the Use of Airport Revenues, vol. 61, No. 38 Fed. Register 7134 (Feb 26, 1996)

FAA, Policy and Procedures Concerning the Use of Airport Revenue, vol. 64, No. 30, Fed. Register 7695 (Feb 16, 1999)

Constitution of the State of Louisiana of 1974

Various Statutes of:

State of California

State of Florida

State of Georgia

State of Kentucky

State of Louisiana

State of Minnesota

State of Tennessee

State of Texas

St. Charles Parish Home Rule Charter

The Charter of the City of Kenner

Charter of the City of New Orleans

Miscellaneous Zoning Provisions of the City of Kenner

St. Charles Parish Ordinance No. 98-8-18, Moratorium on Airport Construction

St. Charles Parish Ordinance No. 66-3-127, Act of Dedication by International Land, Inc.

City of Columbus, OH Ordinance No. 2069-90, to Create a Municipal Airport Authority

Cases

Louisiana Supreme Court

St. Charles Gaming Company, Inc. v. The Riverboat Gaming Commission, 648 So. 2d 310 (La. 1995)

Lafourche Parish Council v. Autin, 648 So.2d 343 (La 1994)

City of New Orleans v. Board of Commissioners of the Orleans Levee District, 640 So. 2d 237 (La. 1994)

The Board of Commissioners of the Orleans Levee District v. The Department of Natural Resources, 496 So.2d 281 (La. 1986)

The Board of Commissioners of the Orleans Levee District v. The Department of Natural Resources, 483 So. 2d 958 (La. 1986)

Francis v. Morial, 455 So.2d 1168 (La. 1984)

City of New Orleans v. State of Louisiana, 443 So. 2d 562 (La. 1983)

Tennessee Gas Transmission Co v. Violet Trapping Co., Inc., 176 So.2d 425 (La.), cert. denied 382 US 902 (1965)

State of Louisiana v. Ouachita Parish School Board, 138 So. 2d 109 (La. 1961), cert denied 370 US 916 (1962)

Louisiana Court of Appeals

City of New Orleans v. Board of Directors of the Louisiana State Museum, 709 So.2d 1008 (La. Ct. App. 1998), writ granted 1998 LX 2105

Allied Signal, Inc. v. Jackson, 691 So. 2d 150 (La. Ct. App. 1997)

Guillot v. Brooks, 651 So.2d 345 (La. Ct. App. 1995)

Varnado v. Southern University at New Orleans, 621 So.2d 176 (La. Ct. App. 1993)

City of New Orleans v. Board of Commissioners of the Orleans Levee District, 612 So.2d 318 (La. Ct. App. 1993), rev'd 640 So.2d 237 (1994)

Louisiana Power of Light Company v. City of Houma, 229 So.2d 202 (La. Ct. App. 1969)

City of New Orleans v. Board of Commissioners of the Port of New Orleans, 148 So.2d 782 (La Ct. App.), cert. denied 151 So.2d 493(1963)

Ohio (Federal Court)

City of Cleveland v. City of Brook Park, 893 F. Supp. 742 (Ohio Dist. Ct. 1995P)

Texas

Eules v. Dallas/Fort Worth International Airport Board, 936 S.W.2d 699 (Tex. Ct. App. 1996)

The City of Irving Texas v. Dallas/Fort Worth International Airport Board, 894 S.W.2d 456 (Tex. Ct. App. 1995)

Dallas/Fort Worth International Airport Board v. The City of Irving, 854 S.W.2d 161 (Tex. Ct. App. 1993)

WEBSITES

AAAIE Airport Website
www.airportnet.org

Airports Council International
www.aci-na.org

Air Transport Association of America
www.air.transport.org

Best Practices in Transportation-National Governors's Assoc.
www.nga.org

Bureau of Transportation Statistics, US DOT
www.bts.gov

Center for Airport Management and Development, Florida Institute of Technology.
www.fit.edu/AcadRes

Center for Transportation Studies, University of Minnesota
www.umn.eduFederal Aviation Administration
www.faa.gov

The Directory of Transportation Resources, Princeton University
<http://dragon.princeton.edu>FAA Statistical Handbook of Aviation,
www.bts.gov

Harmer E. Davis Transportation Library
www.lib.berkeley.edu/ITSL

Louisiana Department of Transportation and Development
www.dotd.state.la.us/aviation

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