

May 16, 2020 at 3:37 pm

**Re: Burien Airport Committee Agenda
Packet - May 19, 2020**

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Good afternoon,

My comments are particular to the agenda item in this packet authored by JC Harris regarding capping flights at Sea-Tac and, further, requesting that citizens write their local elected officials to force the Port of Seattle to comply. While this seems like a simple "ask," there are several legal obstacles that makes this "ask" very difficult.

1. The first is Article 1, Section 8, Clause 3 of the US Constitution, which states that the US Congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes;" and forms the basis of much of the regulatory powers of the federal government. According to FAA regulations (see Order below), capping flights would be a violation of the Commerce clause.

2. FAA Order 5190.6B, Chapter 13. Airport Noise and Access Restrictions, promulgated on 9/30/2009 on page 13-2 reads as follows:

"2. Airport sponsors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or ***unreasonably interfere with interstate or foreign commerce.***" (Emphasis added.)

No doubt, the airport sponsor (Sea-Tac) would argue that there would be interference in both foreign and interstate commerce (intra-state commerce as well), if flights were capped; and based upon my past reading of some Part 161 studies, FAA would agree.

3. There is another alternative that occurs to me that has to do with noise and curtailing operations and that would be for all the surrounding local governments to request that the POS undertake a Part 161 Study authorized by 14 CFR, Part 161. These studies have been demanded by activists across the country and undertaken by many airports in the US. However, they are multi-year, multi-million dollar propositions guided by regulations similar to a Part 150 Study. While a Part 161 Study requires aggressive public outreach (like a Part 150 study), it involves hiring consultants and attending meetings over several years. Realistically though, the track record for approval of Part 161 Studies by the FAA is not great--only one or two have been approved over the past couple decades and, in one case, was accompanied by legal action from the citizenry, not just a study.

4. Otherwise, passage of state legislation in 2019 that created an aviation site selection commission for an additional commercial/cargo hub airport is another method for achieving the goals that JC describes.

5. Finally, it might be useful to consider introduction of state legislation that curtailed (capped) certain aircraft emissions that would have the effect of "capping" flight operations once the limit(s) of toxins are met or exceeded.

Sharyn

We appreciate the Port of Seattle's outreach – in various formats over the past month – with respect to a potential return of our cities to the Sea-Tac Airport Round Table (StART). On behalf of the cities of Burien and Des Moines, we will endeavor to explore in good faith the requirements for removing the current suspension. As stated in our correspondence relating to the participation suspensions and subsequent communications, there are multiple reasons for the suspensions, and residual concerns about re-setting StART. Our good faith exploration of terminating the suspensions requires a careful review of the current processes (including Bylaws), existing and anticipated substantive progress and outcomes, risks of participation, how other stakeholders have (or have not) participated, StART culture, StART facilitation, and of course, needed changes to any or all of the above.

This letter confirms we are moving forward with the goal of identifying how we can re-set StART in a safe, equitable, transparent, accountable, and substantively meaningful way, and to ensure that adequate process guardrails are provided to all stakeholders. While this may take some time – we need to get this right – and we do see several threshold matters that must be addressed at the outset as a predicate to the balance of this important work.

First – it is clear that any further participation will require an agreement that StART meetings be recorded – preferably audio and visual. This will create an atmosphere of trust, transparency and accountability. It will protect all participants and provide a record for the public. Please advise that this is agreeable.

Second – the action precipitating the suspensions by three cities must be reversed. We appreciate the repeated apologies, but they seem hollow when it is the underlying action itself that is problematic. The Port's proceeding with \$10 million in design work for an airport operation expansion project, without completion of the environmental reviews for that same project, seems to be an existential issue for re-setting StART. If the Port is simply going to do what it wants, when it wants, anyway, without actual collaboration with cities in information sharing and decision-making, it is difficult to see how StART can continue in good faith.

Third – there are numerous outstanding written requests and statements of concern from our cities this year that directly relate to airport operations that have never received a response. This lack of communication unfortunately dovetails with the recent failure to advise about the \$10 million in design work, and together forms a problematic frame for re-setting StART. The information addressed and requested by our cities is key to helping to re-set StART, and the Port's response (and courtesy of a response) is needed to help us conduct the good faith exploration discussed above. These include by way of example:

- Burien Resolution 406 and Resolution 407
- September 12, 2019, letter from Mayor Pina to Executive Director Metruck