COUNCIL AGENDA: 04-28-09
ITEM: 3.8

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 04-23-09

SUBJECT: SB 481 (COX) – AIRPORTS: WILDLIFE.

RECOMMENDATION

As referred by the Rules and Open Government Committee on April 22, 2009 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, adopt a position of support for SB 481 (Cox) – Airports: Wildlife

RULES COMMITTEE: 04-22-09
ITEM: 6.1a

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: William F. Sherry, A.A.E.

SUBJECT: SEE BELOW

DATE: April 10, 2009

Approved Christine F. Shippey Date 4/14/09

Council District: N/A
SNI: N/A

SUBJECT: SUPPORT POSITION ON STATE SENATE BILL 481 – AMENDMENT OF STATE FISH AND GAME CODE TO AUTHORIZE REMOVAL OF HAZARDOUS WILDLIFE ON OR NEAR AIRPORTS

RECOMMENDATION

Staff recommends the Committee:

1. Support SB 481 (Cox).
2. Direct staff to:
   - send letters of support to the City's state delegation and Senator Cox; and
   - work with other airports and state elected officials, as appropriate, for passage of the bill.
3. Approve a one-week turnaround for City Council review.

OUTCOME

Supporting SB 481 will enhance the safety, security and regulatory compliance of the Airport by allowing Airport personnel to continue to use federally-permitted lawful lethal measures to remove migratory birds that pose a hazard to Airport operations without risking citation from the State Department of Fish and Game.

Without the legislation, the Airport may be limited in its ability to exercise the full range of federally-permitted alternatives to control hazardous wildlife that could threaten Airport operations and passenger safety.

BACKGROUND

The Federal Aviation Administration (FAA) requires commercial airports to operate within strict safety requirements. These requirements include maintaining and implementing procedures to minimize aircraft collisions with wildlife. Migratory birds are the greatest potential wildlife hazard to aircraft at most airports operating in California.

The Airport has the ability to employ a number of integrated methods, including lethal measures *when necessary*, to control hazardous wildlife and ensure the safety of aircraft operations and passengers. The authority to use lethal force is embodied in an annual depredation permit issued by the U.S. Department of Fish and Wildlife (DFW). The permit outlines strict conditions for the lethal removal of wildlife posing a threat to an airport's operations. For example, the permit for migratory birds does not authorize lethal removal in situations when birds are only causing a nuisance rather than threatening aircraft operations. In fact, the Airport has not exercised the use of lethal measures to remove birds for at least the past five years and possibly not since it was granted a depredation permit, because migratory birds have historically not been a threat to air operations in San José.

The federal depredation permit provides that the City may not conduct the activities otherwise authorized in the permit if doing so would violate the laws of the applicable state, county, municipal or other applicable law. In mid-2007, the California Department of Fish and Game (DFG) determined that the State Fish and Game Code contains no provisions that authorize airport personnel throughout the state to remove wildlife that threaten aircraft operations and passenger safety. DFG has also said its law enforcement officers will have no alternative to issuing citations to airport staff if they are observed employing lethal methods to remove birds on or near airport property, regardless of the potential threat to public safety. The DFG determination was made as a result of a complaint filed by the owner of property adjacent of Sacramento International Airport who observed Sacramento Airport staff employing lethal means to remove migratory birds. DFG staff has stated that its determination applies to any and every airport in the state when a complaint has been filed by a citizen or the airport's lethal removal activities are witnessed by a DFG law enforcement officer.

In January 2009 the Sacramento County Board of Supervisors voted to sponsor a bill that would amend the DFG Code to authorize FAA-certified airports to deploy the full range of hazardous wildlife control methods allowed by the FAA under federal depredation permits. Later that month, Senator Dave Cox of Sacramento introduced SB 481 with that objective in mind. It is that bill that staff is recommending the City support.

As noted above, the City has not had reason to use lethal force to control migratory birds at the Airport. However, staff believes it is important to keep this option available for all airports in the state, including Mineta San José, in the event circumstances warrant its use to maintain the safety of aircraft operations and the traveling public.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City's Sacramento intergovernmental representative and the Intergovernmental Relations Director. For questions or comments, please contact Jim Webb, Assistant to the Director for Government and Legislative Affairs at (408) 501-7600

William F. Sherry, A.A.E.
Director of Aviation

cc: Airport Commission

Attachments: A – Legislative Issue Document to Amend State Fish and Game Code
B – Proposed Legislation

Support Position on State Senate Bill 481 – Amendment of State Fish and Game Code to Authorize Removal of Hazardous Wildlife on or Near Airports City

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What issue would the legislation try to address?

Commercial airports are required by the Federal Aviation Administration (FAA) to operate in conformance with stringent safety requirements, including procedures to minimize aircraft collisions with wildlife. Although mammals may occasionally enter an airfield, birds are the greatest potential wildlife hazard to aircraft.

Comprehensive airport wildlife hazard management programs rely on integrated methods to ensure public safety, including the removal of hazardous species by lethal means when necessary. The removal of migratory birds is carried out under the strict conditions of federal depredation permits issued by the United States Fish and Wildlife Service (FWS). Trapping, relocation and the lethal removal of hazardous wildlife at the Airport is governed by the terms and conditions of the federal depredation permit. The permit is issued annually. It excludes the lethal removal of bald eagles, golden eagles and species listed as endangered under the federal Endangered Species Act. The permit does not authorize lethal removal in situations when migratory birds are simply causing a nuisance. However, the Airport may not conduct any of the activities authorized by the permit that conflict with laws adopted by foreign, State, county, municipal or tribal governments. It is such a conflict that now has statewide implications for aviation safety.

In July 2007, the Californian Department of Fish and Game (DFG) determined that the State Fish and Game Code lacks specific provisions that authorize airport personnel to remove wildlife that threaten aircraft operations and passenger safety. This decision was prompted when the owner of a property bordering Sacramento International Airport filed a complaint with DFG after witnessing Sacramento Airport staff employing lethal measures to remove birds flying into the airport operations area. DFG has further concluded that its Law Enforcement Division has no choice but to issue citations to airport staff if they are observed removing birds on or near airport property – even when such birds pose an imminent threat to public safety. DFG has since taken the position that the State Code only allows the lethal removal of three species: rock doves (pigeons), European starlings and house sparrows. DFG staff has asserted that the wildlife control staff of every airport in the state faces the possibility of citation if a complaint were filed by a citizen or if a DFG law enforcement officer witnesses lethal removal activities.

After more than a year of discussion between Sacramento County and the DFG in an attempt to resolve the issue with DFG, in January 2009 the Sacramento County Board of Supervisors voted to sponsor a bill that would amend the DFG Code to expressly authorize FAA-certified airports in California to deploy the full range of hazardous wildlife control methods prescribed by the FAA that are allowed under FWS depredation permits.

How would this legislation resolve the issue?

Senator Dave Cox (Sacramento) has introduced Senate Bill (SB) 481 that will expressly establish the right of airports throughout the state to engage in the otherwise lawful and federally-permitted lethal removal of hazardous wildlife when necessary to protect health and safety. The bill would add Article 8 ("Management of Wildlife at Public Use Airports") to the Fish and Game Code. A copy of the bill is contained in Attachment B.

The key provision of SB 481 bill states:

"Notwithstanding any other provision of law, a public use airport certificated by the Federal Aviation Administration operating in the state that takes wildlife to protect public safety pursuant to federal law, including a federal depredation permit, does not violate any provision of this code or regulations adopted pursuant to this code."

How would the passage of this bill affect San Jose?

By amending the DFG Code to allow the full range of hazardous wildlife control measures authorized by the FWS, the legislation will enhance the safety, security and regulatory compliance of the Airport by protecting airport personnel from potential citation by DFG's Law Enforcement Division in the conduct of assigned job responsibilities. While the Airport has not had the need to use lethal force to control wildlife at the Airport, staff believes this option must be maintained to provide all airports in the state with the ability to employ the full range of measures authorized by federal law, as circumstances may require, to protect the safety of aircraft operations and the traveling public.

Staff's Recommended Position

Staff recommends the City Council:

1. support SB 481;

2. direct staff to send letters of support to the City's state delegation and Senator Cox; and

3. direct staff to work with other airports and state elected officials, as appropriate, for passage of the bill.

Who has an interest in this legislation?

<u>Support</u>
- County of Sacramento (Sponsor)
- Air Transport Association
- Aircraft Owners and Pilots Association
- Airports Council International

- Association of California Airports
- City of Chico
- Fresno/Yosemite International Airport
- Delta Airlines
- U.S. Airways
- Southwest Chapter of the American Association of Airport Executives
- National Business Aviation Association
- Palm Springs Airport

Oppose

- Friends of the Swainson Hawk
- Audubon California

What is the current status of the measure?

This item was introduced in the State Senate in February 2009. In March it was referred to the Senate's Natural Resources and Water Committee where it is scheduled to be heard on April 28.

SENATE BILL No. 481

Introduced by Senator Cox

February 26, 2009

An act to add Article 8 (commencing with Section 3470) to Chapter 2 of Part 1 of Division 4 of the Fish and Game Code, relating to wildlife.

LEGISLATIVE COUNSEL'S DIGEST

SB 481, as introduced, Cox. Airports: wildlife.

Existing law regulates the taking or possession of birds, mammals, fish, amphibians, and reptiles. Existing law generally provides that a violation of fish and game laws is a crime.

This bill would provide that, notwithstanding any other provision of law, a public use airport certificated by the Federal Aviation Administration operating in the state that takes wildlife to protect public safety pursuant to federal law, including a federal depredation permit, does not violate state fish and game laws.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 8 (commencing with Section 3470) is
2 added to Chapter 2 of Part 1 of Division 4 of the Fish and Game
3 Code, to read:
4
5 Article 8. Management of Wildlife at Public Use Airports
6
7 3470. It is the policy of the state to actively encourage the safe
8 and biologically sound management of wildlife resources on
9 California's public use airports as regulated by the Federal Aviation

Administration (FAA) and its agents. The Legislature recognizes that public use airports serving in the United States are operated according to regulations and policies promulgated by the FAA and federal law that protect the health, safety, and welfare of the public in compliance with applicable FAA regulations, standards, policies, and guidance, wildlife hazard management plans, and associated permits.

3471. The department recognizes that, in its ongoing efforts to protect the health, safety, and welfare of the traveling public in compliance with Federal Aviation Administration (FAA) regulations, and specifically Section 337 of Part 139 of Title 14 of the Code of Federal Regulations, it is necessary to perform wildlife hazing, harassment, and depredation. The department further recognizes that FAA certificated public use airports and their wildlife hazard management staff must harass, haze, or perform removal of species to protect the health, safety, and welfare of the public when authorized by a current, valid federal fish and wildlife depredation permit, even if these takings are prohibited by, or not addressed by, other provisions of this code.

3472. Notwithstanding any other provision of law, a public use airport certificated by the Federal Aviation Administration operating in the state that takes wildlife to protect public safety pursuant to federal law, including a federal depredation permit, does not violate any provision of this code or regulations adopted pursuant to this code.

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