The Portola Valley lawsuit against the FAA's 32 new flight paths in Northern California needs your financial support

The lawsuit specifically addresses the SERFR ONE Arrival Procedure

Community organizing and political pressure will be important regardless of the outcome of the Portola Valley suit, which has received standing. Review of the complaint clearly demonstrates issue with the SERFR ONE arrival structure.

Over the hill, and on the legal front, is the Portola Valley lawsuit, Lyons et. al. v. FAA. A nuisance suit would be difficult because it would have to show that some federal law or regulation was violated leading up to the nuisance, because the airspace in which planes fly is under federal jurisdiction. An inverse condemnation suit seeking compensation for the airport's taking of our noise easements is more promising.

Here is a relevant quote from {Bellarmine College Preparatory v. City of San Jose, 81 Cal. App. 3d 813, 146 Cal. Rptr. 757, 1978 Cal. App. LEXIS 1626 (Cal. App. 1st Dist. 1978)}:

"From the language found in Aaron, it can be seen that a trial judge must find three things present before he determines there is liability in an inverse condemnation (**15) case: [1] There must be substantial interference with use and enjoyment of the property; [2] there must be a resulting measurable diminution in the market value of the property; and [3] the effect of noise upon the property must be so peculiar and so direct that the owner, if uncompensated, would pay more than his fair share to the public undertaking. (Aaron v. City of Los Angeles, supra, 40 Cal.App.3d 471, 484.) Therefore, in order to demonstrate liability, it is necessary to show that a measurable diminution in market value occurred even though this may not be the measure of damages."

Even though Bellarmine was (and is) 1/2 mile from the airport, and the school was built before the airport, the court surprisingly still did not find that the school met those 3 criteria. Thus Bellarmine lost the case. So, we're not optimistic that we would succeed at an inverse condemnation suit, but it's possible that with a fair judge, we could. Our reading of CA law is that we have 3 years from the

implementation of the new flight path on 3/5/15 to file such a suit before the statute of limitations runs out. An inverse condemnation could be filed as a group small claims suit or as a superior court suit against the owner of the airport. In this case, the owner is the city and county of San Francisco.

The Petitioners for the Portola Valley lawsuit are appealing the FAA's 7/31/14 decision to implement 32 new flight paths in the NorCal metroplex. The suit is in the US 9th Circuit Court of Appeals and the court has already accepted the legal standing of the petitioners to bring the case before the court. The opening brief makes strong arguments for the arbitrariness, capriciousness, and unlawfulness of certain actions taken in the process leading up to the FAA's decision to implement 32 new flight paths in Northern CA, including Serfr One, Brixx, Wesla, Sstik, and Cndel, which have caused increased noise in Santa Cruz county and other counties. Serfr One is mentioned frequently in the opening brief of the Portola Valley suit. If successful, the most likely result is that the court would force the FAA to re-do some or all of the EA or to do a full-blown Environmental Impact Statement, which may take over 3 years. With strong public input during that new decision process, the FAA may have to upend their decision to implement some or all of their 32 new flight paths in Northern California. Also, in a new decision process the FAA would have to weigh the fact that Santa Cruz County went from 1 complaint in all of 2014 to over 15,000 complaints in the 4 months since Serfr One implementation on March 5, 2015. Further comments by the public and elected officials would also have to be considered. The court may also require reversion to the old flight paths during any required EIS or a re-assessment of the EA.

Thomas V. Christopher, the main attorney for the suit, says that, even though the FAA is allowed in any EA or EIS to use the hard-to-reach significance threshold of 65 decibel Day-Night average sound Level (DNL), they are not required to do so. Moreover, they are allowed to use other metrics and other considerations, and they sometimes do. Mr. Christopher thinks the 65 DNL threshold is very unreasonable, but he thinks the only court that might countenance a challenge to it would be the US Supreme Court, not the US 9th Circuit Court of Appeals where the case is now.

We asked Mr. Christopher how likely it was that the FAA might rule that the 65 DNL significance threshold would not have been reached even without any of the FAA's mistakes mentioned in the opening brief, and thus the FAA's decision still stands.

Interestingly, he said that such a ruling was very unlikely because the courts try to stay away from making determinations that require technical expertise outside the legal realm.

If we wanted to file a similar lawsuit now, we couldn't, because there was only 60 days after the FAA's 7/31/14 decision in which such a suit could have been filed.[1]

The Portola Valley suit was filed soon before that deadline. Since it was filed in the US 9th Circuit Court of Appeals, if the FAA loses, they'd have to convince the US Supreme Court to hear their appeal, and that would be very difficult. Generally the US Supreme Court won't hear a case unless they find some conflict between decisions about a similar matter in various lower courts.

By the way, Mr. Christopher was named one of the "Best Attorneys in the Bay Area" by Bay Area Lawyer magazine.

I you have questions about this lawsuit, please contact Dr. Tina Nguyen or the Law Offices of Thomas V. Christopher.

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[1] p. 13 of http://www.metroplexenvironmental.com/docs/norcal_metroplex/NorCal_OAPM_FONSI-ROD.pdf