

AVIATION NOISE LAW

Airport Noise and Residential Property Value

Effects of Airport Noise on Housing Value

In 1994 the consulting firm of Booz-Allen & Hamilton, Inc. prepared a report titled The Effect of Airport Noise on Housing Values: A Summary Report for the Federal Aviation Administration. **All research conducted in this area found negative effects from aviation noise, with effects ranging from a 0.6 to 2.3 percent decrease in property value per decibel increase of cumulative noise exposure.**

The report describes a methodology for evaluating the impact of noise on housing values. The methodology essentially compares market prices in similar neighborhoods that differ only in the level of airport-related noise. In pilot studies using this method, Booz-Allen found that the effect of noise on prices was highest in moderately priced and expensive neighborhoods. In two paired moderately priced neighborhoods north of Los Angeles International Airport, the study found "an average 18.6 percent higher property value in the quiet neighborhood, or 1.33 percent per dB of additional quiet." (See Bibliography: Impacts of Noise on Property Value.)

A 1996 study funded by the Legislature of the State of Washington used a somewhat similar methodology and found that the proposed expansion of Seattle-Tacoma Airport would cost five nearby cities \$500 million in property values and \$22 million in real-estate tax revenue. The study of single-family homes -- all in "very good" condition, with three or more bedrooms and two or more baths, and excluding the most expensive and inexpensive units to provide more representative comparisons -- found that "a housing unit in the immediate vicinity of the airport would sell for 10.1 percent more -- if it were located elsewhere."

The Washington study also concluded: "all other things remaining equal, the value of a house and lot increases by about 3.4% for every quarter of a mile the house is farther away from being directly underneath the flight track of departing/approaching jet aircraft." (Details can be found in Sections 9.01 - 9.07 of the study.)

In 1997 Randall Bell, MAI, Certified General Real Estate Appraiser, licensed real estate broker, and instructor for the Appraisal Institute, provided the results of his own professional analysis to the Orange County Board of Supervisors. Comparing sales of 190 comparable properties over six months in communities near Los Angeles International Airport, John Wayne Airport, and Ontario Airport, Bell found a diminution in value due to airport proximity averaging 27.4 percent. (See the full report.) Bell has also developed a list of over 200 conditions that impact real estate values -- airport proximity is categorized as a "detrimental condition."

Disclosure of Airport Noise to Buyers

California law requires sellers to reveal noise and other nuisance factors in a Real Estate Transfer Disclosure Statement prior to sale, permitting prospective buyers to look elsewhere or to lower their offers.

As of January 1, 2004, residential property owners in California are required, under certain circumstances, to disclose to prospective buyers that the property is in the "vicinity" of an airport (Assembly Bill 2776, 2002). (See AB 2776.)

Avigation Easements

Airports can acquire avigation easements in the airspace over neighboring properties in order to (1) prevent construction of buildings and towers, planting of trees, installation of lighting, or any other development that might interfere with aircraft takeoff and landing, or (2) protect against liability for any nuisance caused by airplanes using the airport, i.e., the impact of noise, fumes, and vibration on the "use and enjoyment" of properties under the flight paths to and from the airport. The former is a type of "hazard easement" while the latter is a type of "nuisance easement" but in practice both are called avigation easements. The two types are not typically combined in one legal document, although they may be.

Airports rarely take the trouble to acquire nuisance avigation easements by initiating condemnation proceedings. The nuisance easements are sometimes imposed on new developments near an airport, but only if the airport owner (a city or county) also has jurisdiction over the land surrounding the airport. An airport may also require a nuisance avigation easement as a condition for installing insulation against noise in homes and schools. When sued for nuisance by neighboring landowners, airports assert that they have a prescriptive avigation easement over the plaintiff's land and therefore are not liable for any nuisance due to aircraft noise, fumes, or vibration. In theory a prescriptive avigation easement is acquired by simply flying over the property for a number of years (the number set by state law to perfect a claim for adverse possession). However, only California courts have come close to recognizing avigation easements acquired by prescription (see link below to discussion of prescriptive avigation easements).

If the provisions of the easement are written broadly, the easement could preclude the property owner from successfully suing the airport for maintaining a nuisance (such as noise, air pollution, or airport lighting). For example, the easement might contain language that grants the airport the right to create noise, dust, vibration, fumes, etc. from aircraft presently using the airport as well as any future aircraft at the airport. If at the time the easement was granted the airport was used only by small, propeller-driven planes, but now a variety of helicopters fly in and out of the airport, the property owner would have difficulty arguing that the airport had exceeded its rights under the easement.

Avigation easements are recorded in the county recorder's office and show up in a title search. Like most easements, they are binding on any future owners of the property. See the following:

California Public Utilities Code section 21652 (statutory authority for avigation easements)

Sample avigation easements: California sample, FAA model

Prescriptive Avigation Easements

"Avigation Easements, and Lawsuits for Inverse Condemnation and for Nuisance" by Ronald D. Steinbach, Attorney at Law (California)

[Revised Nov. 13, 2004]