

THE INDEPENDENT

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NOBODY ASKED ME, BUT
BY JERRY FUCHS

Dispute on noise area disclosure

RICH NEWMAN was behind the passage of AB-2776 — authored by Assemblyman Joe Simitian — which requires airport impact disclosure as part of the transfer of ownership of real property located within an airport influence area. The legislation takes effect on Jan. 1, 2004.

The disclosure will require this statement be included in real estate transfer documents:

“This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration or odors). Individual sensitivities to these annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.”

So far, that’s a pretty simple matter of disclosure. But now the \$64,000 question. What parts of the county will be considered the “airport influence area” impacted by the San Francisco International Airport and the San Carlos Airport?

Rich Newman heads the Airport Land Use Committee of C/CAG, which will decide

which Peninsula areas should be placed under AB-2776 and then make that recommendation to the full committee of C/CAG. He says when looking at the SFO influence areas, there is no area of the county that is not impacted and that it would come down to splitting streets and neighborhoods in an unrealistic and impractical plan.

Newman says the statement is obvious and fairly innocuous in the sense that it states a fact that should be universally known, considering the proximity of SFO to every city in the county. But not so fast. Foster City councilmember Marland Townsend says if

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that’s the case, why state it in a document? He contends that there are vast areas of the county, especially in Foster City, that are unaffected by either airport.

In a few months, the two will argue their case before C/CAG. Interestingly, they are both pilots and well versed on airport issues.

Airport Noise Report

A weekly update on litigation, regulations, and technological developments



October 18, 2002

New law requires specific disclosure to homebuyers of airport's impact

California Gov. Gray Davis recently signed into law legislation that, beginning in January 2004, will require sellers of subdivided land to disclose that the property lies within a locally-defined airport influence area and to provide homebuyers with a statement cautioning them to consider the annoyances the airport may cause, such as noise, vibration, and odors, before purchasing.

Only a handful of state and local governments require specific disclosure of airport noise impacts to those who purchase homes near airports. With California leading the way on so many environmental issues, the state's new disclosure law, which will have a broad impact, affecting homes near all public-use airports, could spur other states to follow its example.

"It was apparent that this was not an issue that lent itself to city-by-city ordinance," said State Assemblyman S. Joseph Simitian (D), author of the legislation signed by the governor (AB 2776).

Simitian represents the 21st Assembly District of California, which includes all or parts of 15 cities in San Mateo and Santa Clara Counties, located south of San Francisco. As a former mayor of Palo Alto, CA, and a Santa Clara County

supervisor, he became familiar with the airport noise issue. He also holds degrees in law and urban and regional planning which give him added expertise to address airport environmental issues.

His bill, introduced last February, passed the state Assembly and Senate in August by the barest of margins and was quickly approved by the governor on Sept. 12.

Two Goals

The legislation had two goals, Simitian said. One was to provide notice that a home is located near an airport in more than just one place in sales documents in the hope that by providing duplicative notice it would not be missed. The second goal was to try to identify "in plain English" what the impacts might be of living close to an airport.

Simitian's bill requires disclosure that a home is within an airport influence area to be specified or referenced in four separate documents: the subdivision report, transfer disclosure documents, the natural hazard report, and in covenants and restrictions for the subdivision. He initially considered requiring the disclosure statement to be included with the preliminary title report but concluded

that was not the appropriate place for it.

His legislation also requires that the following statement be included in transfer disclosure documents if a home is located in an airport influence area:

"This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you."

Prior to passage of Simitian's legislation, developers were required to disclose that a home was within two miles of an airport in their subdivision reports, which were provided to homebuyers. But the notice of the home's proximity to an airport was just one item on a laundry list of information that could easily be missed by the homebuyer.

Those selling homes also are required under California law to fill out transfer disclosure statements when they put their property up for sale that ask whether noise is a

problem. But such determinations are subjective and homeowners who have become accustomed to aircraft noise might not view it as a problem. Others might not want to disclose that noise is a problem.

“Current mechanisms for providing notice to home buyers of potential airport impact are inadequate as evidenced by the number of complaints and lawsuits regarding airport noise by residents of surrounding communities,” Simitian contended in his bill, which transfers responsibility for disclosing that a home is near an airport from the owner and to the real estate community.

Bill Created ‘Buzz’

The impetus for Simitian’s bill came from people with real estate backgrounds and general aviation pilot groups in the San Carlos, CA, area, where residential encroachment near a small general aviation airport with flight training operations is threatening to squeeze the airport out.

“It was a sleeper bill until other folks realized it had the potential to have benefit beyond general aviation airports,” the Assemblyman explained.

As the bill picked up support from the Aircraft Owners and Pilots Association (AOPA), the California Pilots Association, the City of Santa Barbara, and San Francisco and Oakland International Airports, it created some “buzz” around the state out of concern “that if the pilots were for it, it could not be good for homeowners,” Simitian explained.

But he contends that his legislation is “first and foremost a consumer protection bill” and will benefit homeowners, pilots, and airports.

“There was concern among homeowners that the notice provision might empower pilots or airports to act badly and with greater impunity and would diminish the ability of homeowners to compel good behavior,” Simitian said. But he stressed that the bill was very carefully crafted to make sure that nothing in it expanded the rights or entitlements of airports or pilots.

There also were concerns raised by homeowners that the notice requirement would have a negative impact on property values but Simitian contends that, if that were the case, the California Association of Realtors would never have supported the measure.

He also stressed that his bill is “only a notice measure” and says nothing about residential compatibility with airports.

It required a tremendous amount of time and energy to get the bill approved, Simitian said, noting the ever-growing number of people that became interested in the legislation and the complexity of the issues it addressed. It was a high effort bill that shows the sensitivity of the issue, he said.

In the end, after responding to homeowners’ concerns, only one homeowners group from the East San Francisco Bay area formally opposed the bill. San Mateo County, where San Francisco International Airport is located, also opposed the measure.

The county would have supported the bill had it been amended to require that the airport land use commissions, which determine the scope of the airport influence areas, make area maps parcel-specific so that individual homeowners could determine if their home was within the influence area.

That amendment was not added because of the cost of developing such maps. However, the bill did include a provision specifying that homeowners were not required to have specific knowledge of whether their property was located in an airport influence area. Only professionals such as land developers, geologists, surveyors, and planners are required to have such information.

Airport Influence Areas

Airport influence areas are not new in California but they are unique to the state and are established by airport land use commissions, which must be formed in every county where one or more public use airport is located.

These commissions establish airport influence areas based on four parameters that will be unique at each airport: height, noise, safety, and overflights. Each commission draws what it considers the appropriate boundary for the airport influence area in its county and adopts it as the airport planning boundary. Because factors in addition to noise are considered, the airport influence area frequently extends beyond the 65 CNEL contour, which is California’s residential land use compatibility threshold.

The text of the bill (Assembly Bill 2776) is available on the state web site at: <http://www.leginfo.ca.gov> from where the bill can be searched for by number.