

## MEMORANDUM

**To:** Hon. Elizabeth Lewis, Chair, San Francisco Airport Community Roundtable

**From:** Supervisor Dave Pine, San Mateo County Board of Supervisors

**Re:** City of Phoenix v. FAA

**Date:** October 4, 2017

The recent court decision concerning the FAA and the City of Phoenix has generated significant interest in San Mateo County communities affected by NextGen flight routes serving SFO and other Bay Area airports. I have received numerous inquiries regarding the case and whether it might be helpful in our efforts to provide relief from NextGen flight routes here in the Bay Area. I expect other members of the Roundtable are receiving similar inquiries.

In order to address these inquiries, I have identified and answered some “Frequently Asked Questions” regarding the case. In composing the answers, I consulted a number of individuals familiar with the case and with the Northern California Metroplex flight routes and review process, including legal counsel. That said, the opinions raised in this memo are my own, and should not be attributed to San Mateo County or to the Board of Supervisors.

### **Background**

On August 29, 2017, the United States Court of Appeals for the District of Columbia issued an opinion rescinding the Federal Aviation Administration’s (FAA) NextGen flight routes serving Sky Harbor International Airport in Phoenix, Arizona. The case is *City of Phoenix v. FAA* (D.C. Cir. No. 15-1158)(August 28, 2017). In the opinion, the court agreed with the City of Phoenix and a community group that the FAA had violated the National Environmental Policy Act (NEPA), National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act.

### **Why did the Court rule as it did?**

The court’s decision addressed the timeliness of the lawsuit as well as the FAA’s compliance with applicable federal law when implementing the new flight routes.

A critical issue was whether the lawsuit was filed in a timely fashion, because it was filed outside the normal 60-day time limit for challenging the publication of flight routes. It is extraordinarily unusual for a court to find good cause for waiving the normal 60-day deadline for filing a lawsuit of this kind. However, in this case the court held that there were “reasonable grounds” for the delay in filing the lawsuit. The court indicated the

delayed filing was warranted because the FAA's repeated communications with the City of Phoenix regarding the flight routes (beginning right after the routes were published and continuing for months thereafter) would have led reasonable observers to think the FAA was working to address the noise problems without the need to resort to litigation.

As for the FAA's compliance with NEPA, the National Historic Preservation Act, and the Department of Transportation Act, the court determined that the FAA had failed to engage in sufficient outreach or perform appropriate environmental assessment of the new routes in Phoenix. Of particular note, the court found that: the FAA's interaction with "low-level" local airport staff members was insufficient to comply with its legal obligations; the FAA deviated from its the environmental review process it had used for NextGen routing in other metroplexes; and the FAA had not sufficiently considered the impacts on certain historical neighborhoods.

### **What does this decision mean for potential challenges to NextGen flight routes in San Mateo County?**

The FAA issued its flight routes for the Northern California (NorCal) metroplex on July 31, 2014. The FAA's administrative process for reviewing the route changes for the NorCal metroplex was a separate, distinct and different review than what was performed in Phoenix. There are significant and numerous differences between the FAA review process and legal context in the Phoenix and Norcal metroplexes. Due to these differences, I believe the recent Phoenix decision does not provide grounds to pursue legal action to reduce the noise impacts of the NextGen implementation in San Mateo County.

First, it is unlikely that the NorCal region would be granted a similar exception from complying with the 60-day time limit. In Northern California, the FAA's level and nature of engagement was different from Phoenix, where the agency's actions led interested parties to conclude that resolution of noise issues would not require court intervention.

Second, there has already been litigation (filed within the original 60-day time limit) challenging the NextGen flight routes in the Norcal metroplex. In that case, the United States Court of Appeals for the Ninth Circuit upheld the FAA decisions and determined that the FAA complied with applicable laws when it issued those routes. [*Lyons, et. al. v. FAA* (Ninth Cir. No. 14-72991)(December 21, 2016)]. This prior litigation would make future legal challenges to those same routes very difficult.

Third, the FAA's public (and somewhat more transparent) process in Northern California differed from the opaque process in Phoenix. The *City of Phoenix* decision specifically criticized the FAA's NEPA process in Phoenix because it deviated from the NEPA analysis employed in the Boston, Northern California, Charlotte, and Atlanta metroplexes. The FAA undertook a different, more extensive review process under NEPA here in Northern California.

Finally, specific impacts were important in the *City of Phoenix* litigation that are not present in NorCal. The affected areas in Phoenix included historic neighborhoods explicitly protected by the National Historic Preservation Act. There are not similar impacts in San Mateo County.

### **What options are available for San Mateo County communities affected by NextGen flight routes?**

The San Francisco Airport Roundtable (SFORT) has been engaged with the FAA regarding the impacts of the NextGen flight routes and other legacy noise issues. Since its inception in 1981, the SFORT has advocated for noise mitigation efforts for communities affected by SFO flight traffic. The introduction of NextGen procedures in the NorCal Metroplex impacted communities both within and beyond San Mateo County and necessitated further action. Due to the efforts of local Members of Congress, the FAA issued "*The FAA Initiative to Address Noise Concerns of Santa Cruz/Santa Clara/San Mateo/San Francisco Counties: Compiled at the Request of Representatives Farr, Eshoo and Speier*," which listed a number of suggested changes to flight procedures. The SFORT and the Select Committee on South Bay Arrivals (SCSBA), an ad-hoc body established by three local Members of Congress, each prepared responses to the FAA regarding these flight procedures and made numerous additional recommendations. Evaluation and negotiation by the SFORT and community leaders with the FAA over these flight procedures continues.

### **How can residents get more information?**

- **San Francisco Airport Roundtable**  
<http://sforoundtable.org/>.
- **Congresswoman Jackie Speier Airport Noise Page**  
<https://speier.house.gov/issues/legislative-issues/airport-noise>  
*Includes links to the FAA Initiative documents, the Recommendations of the SFO Roundtable and the Select Committee on South Bay Arrivals, archived meeting videos, noise resources from the FAA and others, and instructions for filing a noise complaint at the three major Bay Area airports*
- **SFO Noise Abatement Office**  
[www.flyquietsfo.com](http://www.flyquietsfo.com)