

# NEIGHBORHOOD NOISE



CITIZENS AGAINST AIRPORT POLLUTION, P.O. BOX 26142, SAN JOSE, CA 95159 (408) 297-9753 NOVEMBER 1997

## CAAP and the Nighttime Curfew

After years of political activity aimed at reducing noise, air pollution and traffic congestion created by San Jose International Airport, CAAP filed suit to stop the Airport Master Plan. The central issue of the lawsuit alleges that the City of San Jose has failed to comply with the California Environmental Quality Act (CEQA) and therefore the Airport Master Plan is invalid.

In addition, the lawsuit seeks a court order requiring the enforcement of San Jose's Noise Control Program. This program was adopted by the City of San Jose in 1984 and among other things, established a curfew for aircraft operations between the hours of 11:30 p.m. to 6:30 a.m. CAAP has long urged the city to take appropriate steps to establish the legal validity and enforceability of curfew under state and federal law. The City has failed to do so for reasons that are unclear to us.

A central assumption of the Airport Master Plan EIR is that San Jose's Noise Control Program (the curfew) is valid and enforceable. If that assumption is incorrect, the entire Airport Master Plan is defective and illegal. CAAP wants the City of San Jose to prove in court that the Noise Control Program (the curfew) is valid and enforceable before it goes forward with future airport development.

Once the Airport Master Plan has been fully implemented, a challenge by the airlines or other business interests, contesting the enforceability of our curfew, could be devastating. San Jose would have a hugely expanded airport with little or no control over airport operations round the clock. We need to know the truth. If the curfew is valid and enforceable everyone will be

happy. If the curfew is invalid we need to know before the massive airport build-out is complete. In this way, the City would still have significant leverage to withhold approval of major airport expansion until our curfew could be made legal and enforceable.

Recently, Councilman David Pandori has expressed concern that CAAP's lawsuit may expose San Jose's Noise Control Program to be invalid. Such a result would invalidate the entire Airport Master Plan and require the city council to reevaluate its Airport Master Plan from scratch.

If the City is so confident that the Noise Control Program is legally valid and enforceable, why is Councilman David Pandori so concerned? What does the City of San Jose know that we don't?

The truth of the matter is simple. Our curfew is important to the neighborhoods. We want the City of San Jose to enforce it religiously. Unfortunately, despite the fact that it has been violated on hundreds of occasions, the Noise Control Program has never been tested in the courts. Why not? Could it be that the City itself lacks confidence that it can be successfully enforced? What will happen to the neighborhoods if the huge Airport expansion is built, and then we discover that the Noise Control Program was invalid under Federal law? Who will protect us then?

Councilman Pandori has counseled CAAP to avoid testing the legality of the curfew and to assume that it is valid. We certainly hope it is. The City has been assuring us of this for many years. However, to our knowledge, the Federal Aviation Administration has not taken the position that our curfew is valid and enforceable under Federal law. Furthermore, recent changes to

Federal law have raised important questions about the validity of San Jose's Noise Control Program.

The truth of the matter is this. We better find out now if the Noise Control Program is valid. It's a basic underlying assumption for the Airport Master Plan EIR. If the City is wrong we better find out before the huge airport expansion is implemented. Otherwise, we will all pay a terrible price. If the curfew is invalid the City should withhold approval of major airport expansion until our curfew can be made legal and enforceable.

Don't be fooled by the argument that we should pretend that the curfew is valid and enforceable. Airline and other business interests may not hesitate to challenge our Noise Control Program once the airport is fully expanded.

## CAAP Expands Lawsuit

On October 31, 1997, CAAP filed its first amended complaint against the City of San Jose. This amended complaint elaborates on the violations of Title VI of the Civil Rights Act of 1964, alleged by CAAP.

Our lawsuit alleges that residents who live in the Guadalupe/Washington neighborhood (and other neighborhoods in the vicinity of the airport) will be injured if the Airport Master Plan is implemented. The suit alleges that certain minority neighborhoods are suffering measurable disparate impacts from current airport operations and planned expansion under the Airport Master Plan.

The Civil Rights Act of 1964, Title VI, mandates that Federal funds cannot be used to promote projects that create discriminatory impacts on the basis of race, color or national origin.

Title VI of the Civil Rights Act specifically prohibits a recipient (City of San Jose) from determining the site or location of facilities (the airport) with the purpose *or effect* of excluding persons from, denying them the benefits of, or subjecting them to discriminatory impacts, under any program or project to which the law applies on the grounds of race, color or national origin.

CAAP expects that this environmental justice cause of action may take longer to litigate than the other issues in our lawsuit and as such, CAAP may seek to bifurcate this issue for trial. In addition, CAAP is still expecting to file a federal lawsuit in the near future to halt airport expansion.

## Highlights from CAAP Lawyers' Resumes

Thinking its members might have an interest in the professional background and litigation experience of the legal counsel retained in its suit against the City of San Jose, CAAP requested the resumes of Susan Brandt-Hawley and Rose Zoia of Brandt-Hawley and Zoia.

What they received was an impressive six-page facsimile with a long and impressive litany of solid legal and environmental accomplishments.

In 1993, Rose and Susan joined together to represent citizens groups in historic preservation and environmental land use cases with an emphasis in the California Environmental Quality Act. Here are some of their respective career highlights.

### Susan Brandt-Hawley

- Undergraduate Education: B.A. Philosophy, *magna cum laude*, San Diego State University, 1973 *Phi Beta Kappa*
- Admitted to the California and Federal Bar in 1977
- President, Sonoma County Bar Association, 1992
- Trustee, California Preservation

Foundation, 1991–1997

- Representative Clients: Airport Action Committee, Sierra Club, Russian River Task Force, Stanislaus Natural Heritage Project, Citizens for Alternative Water Solutions, Mendocino Environmental Center, Surfrider Foundation, Monterey Peninsula Regional Park District, Southern California Society of Architectural Historians, North Oakland Voters Alliance, National Trust for Historic Preservation
- Argued cases before California Supreme Court, California Court of Appeal, and Federal District Court

### Rose M. Zoia

- Undergraduate Education: B.A., Political Science and Social Work, *summa cum laude*, Ohio University, 1983; *Phi Beta Kappa*
- Legal Education: Juris Doctor, *cum laude*, George Washington University National Law Center, 1983
- Admitted to the California Bar and Federal Bar, District of California in 1988
- President, Sonoma County Bar Association, 1996
- Representative clients include: Proponents of Proper Planning in Windsor, Mark West Creek Preservation Assoc., West County Environmental Protection Assoc. Co-counsel: Russian River Task Force, Cache Creek River Basin Resource Coalition, Stanislaus Natural Heritage Project, Citizens for Alternative Water Solutions, Citizens for Historic Preservation, Sacramento Old City Assoc., Sacramento Art Deco Society.

## Support This Bill!

House Resolution 536 and companion Senate Bill 951, "the Quiet Communities Act of 1997", deserves our strong support.

This Act calls for re-authorization of funding to the EPA Office of Noise Abatement and Control and removes responsibility for monitoring the health effects of noise from the FAA, which promotes the air transport industry.

Such responsibility will go to the EPA, whose charge it is to protect the public health and the environment. HR 536 would require EPA to:

- coordinate all federal noise abatement activities,
- update and develop noise standards,
- provide assistance to local communities, and
- promote research/education on the impacts of various noise sources—airplanes and others.

The EPA would also be mandated to submit to Congress a study on airport noise impacts within 18 months!!

Members are asked to contact our Congress members and Senators to support and co-sponsor this important bill. Congresswoman Zoe Lofgren already signed on as a co-sponsor on October 10 (271-8700). Thanks are certainly in order.

Congress members to be contacted are Tom Campbell (371-7337), Anna Eshoo (245-2339), and Pete Stark (510-494-1388). Congress members receive mail c/o Rayburn House Office Bldg., Washington, DC 20515.

Our Senators, Dianne Feinstein (415-249-4777) and Barbara Boxer (415-403-0100), need to hear from you as well. Both receive mail c/o Hart Office Bldg., Washington, DC 20510. E-mail: senator@boxer.senate.gov and senator@feinstein.senate.gov

## Rosemary Gardens Couple Locate Airport Noise Source!

Ron and Vicki Townsend of the Rosemary Gardens Neighborhood have tracked the source of the high pitch whines that often emit from the San Jose International Airport (SJC).

The noise is generated from aircraft (usually Mexicana Airlines) parked in the Federal Inspection area located at the south end of the airport. Aircraft subject to inspections must have

electricity to provide lighting for the inspectors. The most convenient power source is the aircraft's built in auxiliary power unit (APU) that is actually a small turbine engine.

Much to the neighborhood's dismay, it is this onboard APU that causes the obnoxious and high pitched whine that disturbs San Jose residents for long periods of time—often hours!

An alternative to an APU is a ground power unit (GPU) that can be moved to different areas of the airport by truck. On three separate occasions the Townsends contacted the airport. The Manager on Duty was very coop-

erative and promptly arranged for a GPU to be brought to the Federal Inspection Area. This provided relief from the noise, although temporary.

The Townsends consulted Councilmember David Pandori about the problem, who in turn contacted Ralph Tonseth, SJIA Director of Aviation. The results was that the Airport agreed to maintain a GPU at the Federal Inspection area until a more permanent solution can be arranged.

Individuals *can* make a difference. Thank you, Ron and Vicki, for your diligence and tenacity in helping to improve our quality of life.

## Volunteers Needed

CAAP needs a newsletter committee that would be willing to meet one evening (3 hours) every 6 weeks or so, to prepare the newsletter for mailing. The steering committee is putting in long hours and a your contribution of time would be greatly appreciated.

We also need a volunteer to run errands on an infrequent basis. This could mean picking up/delivery to city hall or the local printer for photo copies.

If you have a flexible schedule and 1-2 hours a month for CAAP, we would welcome hearing from you!

---

## CAAP's steering committee:

Lenora Porcella	Chairman	Travel Agent	76146.1705@compuserve.com
Russ McBrien	Vice Chair	H-P Executive	
Patricia Koopman	Secretary	Retired Teacher	patk316@aol.com
Sharen Dains	Treasurer	Freelance Court Reporter	
Robert Harmssen	Legal Advisor	Attorney at Law	
Kenneth Hayes	Medical Advisor	Physician	
Sam Miller	Distribution	Account Executive	
Christopher Escher	Public Relations	Public Relations	
Lyle Johnson	Santa Clara Advisor	Attorney at Law	
Lilian Dennis	Rosemary Gardens	Small Business Owner	
Leo Rubio	Guadalupe-Washington	Interpreter	lrubio2000@aol.com

## YES! I want to fight Airport Pollution!

Please apply the enclosed donation toward \_\_\_\_\_ \$1,000 \_\_\_\_\_ \$500  
 the **Neighborhood Defense Fund\***: \_\_\_\_\_ \$750 \_\_\_\_\_ \$250  
 \_\_\_\_\_ Other \_\_\_\_\_ I pledge a monthly donation of \$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Employer: \_\_\_\_\_ Occupation: \_\_\_\_\_

\*CAAP is required by law to disclose the occupation and employer of those who contribute more than \$99.

\_\_\_\_\_ I have also included my annual support of \$35.00.

P.O. Box 26142, San Jose, CA 95159 (408) 297-9753

Check out our web site at: [www.caap.org](http://www.caap.org)



C A A P  
 CITIZENS AGAINST  
 AIRPORT POLLUTION

