

#65.40

2/25/70

First Supplement to Memorandum 70-19

Subject: Study 65.40 - Inverse Condemnation (Aircraft Noise Damage)

Attached hereto is a copy of Judge Jefferson's memorandum opinion setting forth his resolution of the issues in the most recent Los Angeles aircraft noise case. We have not attempted to summarize his opinion. Despite its length, we believe the opinion is remarkably free of extraneous material and we hope that the Commissioners will have an opportunity to read it with some care.

Respectfully submitted,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

IRVING D. AARON, et al.,  
Plaintiffs,

-vs-

CITY OF LOS ANGELES, a  
municipal corporation,

Defendant.

NO. 837 799

MEMORANDUM OPINION

This is an action for damages for inverse condemnation. There are approximately one thousand five hundred plaintiffs who allege that they are the owners of real property in the neighborhood of the Los Angeles International Airport, sometimes hereafter referred to as the Airport, and that the City of Los Angeles, the only defendant in this action, has permitted and caused an increasing number of jet airplane flights over and in the immediate vicinity of the plaintiffs' properties, so that the noise, smoke, vibrations and fumes from the aircraft have damaged these properties. There are approximately seven hundred and fifty separate parcels of real property involved in this action. All of the parcels are residential in nature. Most of these parcels are located east of the Airport, with the remainder being located west of the Airport and in the beach area commonly known as Playa del Rey.

1 Besides denying the allegations set forth in the com-  
2 plaint, the defendant City asserts a number of affirmative  
3 defenses. The defenses raised by the defendant are as follows:  
4 (1) that the complaint fails to state a cause of action; (2) that  
5 the cause of action is barred by the statute of limitations as set  
6 forth in sections 312, 318 and 319 of the Code of Civil Procedure;  
7 (3) that the action is barred by the statute of limitations as set  
8 forth in section 338, subdivision 2, of the Code of Civil Pro-  
9 cedure; (4) that the Federal Aviation Act of 1958, as amended, has  
10 preempted control of airspace navigation; (5) that the defendant  
11 City has acquired by prescription an easement in the airspace in-  
12 volved because of more than five years' adverse use by defendant  
13 City; (6) that public convenience and necessity require that defend-  
14 ant City use the airspace involved in this action, and that the  
15 City is entitled to an easement for continued use of this airspace.

16 A Pretrial Order was made which sets forth the various  
17 contentions of the parties, including additional issues to the ex-  
18 tent that they are not raised specifically by plaintiffs' complaint  
19 and defendant's answer thereto. An important additional issue  
20 which has been raised and litigated in this case is the question of  
21 whether the plaintiffs are barred from relief by the failure to  
22 file a timely claim with the defendant City.

23 The basic theory of liability which plaintiffs advance is  
24 that the noise from jet aircraft flying over and near the residen-  
25 tial properties of plaintiffs has resulted in a substantial diminu-  
26 tion in the market value of these properties, which thus consti-  
27 tutes a "taking or damaging" of these properties within the purview  
28 of Article I, section 14, of the California Constitution.

29 It is conceded that the Los Angeles International Airport  
30 was in existence at its present location prior to the acquisition  
31 by the plaintiffs of their residential properties. The runways of  
32 the Airport are located in an easterly and westerly direction.

1 Planes landing at the Airport approach the runways from an easterly  
2 direction. Planes leaving the Airport do so in a westerly direc-  
3 tion and fly out over the ocean. These are the flight patterns of  
4 arrivals and departures for most of the days in the year. Occa-  
5 sionally, because of wind conditions, arrivals are directed to come  
6 from the west and takeoffs toward the east. The times, however,  
7 when these changes are made are rare enough that they need not be  
8 given any consideration with respect to the issues involved in this  
9 case.

10 Before the year 1959, planes flying into, and departing  
11 from, the Los Angeles International Airport were of the propeller  
12 type. The first jet airplanes started using this Airport in 1959,  
13 and, since 1959, there has been a gradual, yearly increase in the  
14 number of jet aircraft arriving and departing from this Airport.  
15 Apparently, there has been little or no complaint from property  
16 owners with respect to noise emanating from the propeller-type  
17 airplanes. The noise problem developed only with the advent of jet  
18 aircraft.

19 Although there was some testimony that soot, oil and fuel  
20 debris from jet aircraft fell on some of the parcels involved in  
21 this litigation, causing damage to painted surfaces and preventing  
22 homeowners from keeping their cars uncovered and using their yards  
23 for clothes drying, the essence of the claimed reductions in market  
24 values of property affected is related solely to the noise from the  
25 jet planes as the responsible cause.

26 Plaintiffs do not seek damages because of any personal in-  
27 jury, discomfort or annoyance. Although the testimony establishes  
28 that jet noise interrupted normal conversation, radio and television  
29 reception and sleep, at times, no claim is asserted for these re-  
30 sults as such. The evidence as to the effects of jet noise upon  
31 personal comfort, enjoyment or convenience in living was offered as  
32 a factor tending to show that these effects caused a reduction in

1 the fair market value of the respective parcels of real property.  
2 What plaintiffs seek in this action are money damages measured by  
3 the extent to which the market value of the respective parcels of  
4 property has been reduced because of noise from jet aircraft flying  
5 over and near these parcels located within and near the landing and  
6 takeoff patterns.

7 One of the crucial issues involved in this litigation is  
8 whether noise from jet aircraft presents a proper case for inverse  
9 condemnation. It is the contention of the defendant City that the  
10 law does not sanction any recovery for noise against a government  
11 entity, even assuming that such noise has caused a diminution in  
12 property values. There is yet no appellate court decision in  
13 California on this point. The trial courts must chart the theories  
14 of recovery or nonrecovery, and, ultimately, the California Supreme  
15 Court will be asked to determine this aspect of the law of inverse  
16 condemnation upon appeals from judgments of the trial courts.

17 There are various alternatives which may be considered.  
18 The federal Constitution provides for the payment of compensation  
19 only when there is a "taking" of private property for a public use.  
20 Under the federal view, what is meant by the concept of the "taking"  
21 of private property? The federal courts have made it clear that  
22 there can be no recovery in eminent domain or inverse condemnation  
23 proceedings unless the owner of real property has been ousted or  
24 displaced by the Government with respect to some portion of his  
25 property, with the result that the Government occupies what the  
26 owner once occupied or had the right to occupy. Under the federal  
27 cases, an injury to property without displacement or ouster of the  
28 owner is not compensable.

29 With respect to the flight of aircraft and aircraft noise,  
30 we have the problem of determining how noise from the flight of air-  
31 craft which lowers the market value of property can constitute a  
32 "taking" of such property. The federal rule solved this problem by

1 holding that the flight of aircraft over an owner's property con-  
2 stitutes an invasion of the owner's airspace over his surface  
3 property, and that this is a sufficient "taking" to permit recovery  
4 by the owner who suffers a market-value loss by such overflights.  
5 But the federal rule does not allow any recovery to the owner who  
6 suffers a loss in market value from horizontal noise, or noise from  
7 flyby aircraft, even though it may be as annoying to him as it is  
8 to the owner directly over whose property the airplanes are flying.  
9 In United States v. Causby, 328 U.S. 256 (1946), the United States  
10 Supreme Court held that flights on takeoff and landing at low level  
11 over an owner's property could be considered a "taking" in the  
12 nature of an easement of flight, and rendered the Government liable  
13 for the decreased value of the owner's property. In Causby, the  
14 court made it clear that this decision was being limited to permit-  
15 ting recovery by a property owner over whose land the planes took  
16 off, and could not be considered as a holding to protect nearby  
17 owners. The nearby owners are considered to have suffered inciden-  
18 tal damage for which no recovery is allowed.

19 In Batten v. United States, 306 F.2d 580 (10 Cir. 1962),  
20 plaintiffs whose property values were depreciated by the noise from  
21 jet aircraft near their properties, but which were not subject to  
22 direct overflights, sought damages from the Government under the  
23 theory that there was a "taking" of their property which was com-  
24 pensable under the federal Constitution. The majority of the court  
25 followed Causby and held that damage from lateral flight noise was  
26 not a "taking" by the Government. Plaintiffs were thus denied re-  
27 covery.

28 A second view would permit recovery in inverse condemna-  
29 tion by property owners who suffer substantial diminution in market  
30 value from jet aircraft noise, regardless of whether the planes fly  
31 directly over the owner's property or not. Under this view, it is  
32 recognized that there can be no acceptable theory of a "taking" of

1 the owner's property under such circumstances. This second view  
2 permits recovery on a nuisance theory, which requires substantial  
3 damage to the property owner. Is there any basis for sustaining  
4 such a view under a state constitutional provision which provides  
5 for compensation only when there is a "taking" of property by a  
6 governmental entity? This view of recovery is sanctioned in the  
7 State of Oregon. This was the holding in Thornburg v. Port of  
8 Portland, 233 Ore. 178, 376 P.2d 100 (1962). In Thornburg, the  
9 plaintiffs owned property near an airport which was owned and  
10 operated by a public agency, the Port of Portland. Oregon's Con-  
11 stitution is similar to the federal Constitution, and provides for  
12 compensation only for a "taking" of private property by govern-  
13 mental action. The damage to property values alleged came from  
14 noise from horizontal flights, or flyby aircraft, rather than from  
15 vertical flights, or flyover aircraft. The Oregon court rejected  
16 the federal rule set forth in Gausby of limiting recovery to cases  
17 of noise from vertical flights, or flyover aircraft, which may be  
18 explained as a trespass theory, which gives the Government an  
19 easement right. The Oregon court adopted a nuisance theory, which  
20 permits recovery for damages so long as there is proof of real  
21 injury, whether resulting from noise coming from flyover or flyby  
22 aircraft.

23 However, in a second appeal in Thornburg v. Port of  
24 Portland, 244 Ore. 69, 415 P.2d 759 (1966), the Oregon court,  
25 although seemingly rejecting the nuisance theory of recovery  
26 enunciated by it in the first appeal, did, nevertheless, clarify  
27 what was required to be established by a landowner in order to  
28 recover damages for inverse condemnation. The court said, "The  
29 proper test to determine whether there has been a compensable in-  
30 vasion of the individual's property rights in a case of this kind  
31 is whether the interference with use and enjoyment is sufficiently  
32 direct, sufficiently peculiar, and of sufficient magnitude to

1 support a conclusion that the interference has reduced the fair  
2 market value of the plaintiff's land by a certain sum in money.  
3 If so, justice as between the state and the citizen requires the  
4 burden imposed to be borne by the public and not by the individual  
5 alone." (Thornburg, supra, 415 P.2d at p. 752.) See Murrah, C. J.,  
6 dissenting, Batten v. United States, 306 P.2d 580, 587 (10 Cir.  
7 1962).

8 A third view is a further extension of the Oregon rule.  
9 The Oregon view requires proof of substantial damages. This third  
10 view permits recovery for any damage, whether substantial or not,  
11 which results to the property owner from aircraft noise, regardless  
12 of whether the noise comes from flyover or flyby aircraft. This  
13 view is espoused by the State of Washington. In Martinez v. Port  
14 of Seattle, 64 Wash.2d 324, 391 P.2d 540 (1964), plaintiffs were  
15 property owners near the Seattle-Tacoma International Airport,  
16 owned and operated by the Port of Seattle, a municipal corporation.  
17 Some of the plaintiffs were located underneath the flight patterns,  
18 while others were not directly underneath but were near the flight  
19 patterns, and all claimed a decrease in property values from the  
20 jet noise. Here the question was whether the plaintiffs' complaint  
21 which set forth these facts stated a cause of action. The  
22 Washington Constitution contains a clause which requires compensa-  
23 tion for "taking" or "damaging" private property by governmental  
24 action. The Washington court held that plaintiffs' complaint  
25 stated a cause of action. The court rejected as purely legalistic  
26 any theory of trespass or easement or a limitation of recovery to  
27 invasion of airspace above an owner's property. The court adopted  
28 the view of the dissent in Batten v. United States, cited supra,  
29 that there should be compensation whenever the interference with  
30 the use of an owner's land is of sufficient directness, peculiarity  
31 and magnitude "that fairness and justice, as between the State and  
32 the citizen, requires the burden imposed to be borne by the public



1 and not by the individual alone." (Martinez, supra, 391 P.2d at  
2 p. 546.) However, the Washington court refused to accept the prin-  
3 ciple that the plaintiffs must make a showing that their damage is  
4 substantial before the damage can be said to be a taking or damaging  
5 within the meaning of the constitutional language. The Washington  
6 court rejected the view that less-than-substantial damage would be  
7 considered noncompensable as incidental damage, holding that any  
8 diminution of property values, however slight, should be compen-  
9 sable.

10 We now turn to the law of California to determine if  
11 California has embraced a particular theory for recovery in airport  
12 noise cases. We start with a consideration of the street or free-  
13 way noise cases. To date, California has taken the view that a  
14 property owner whose property has not been taken for freeway or  
15 street purposes, but whose property has been decreased in value  
16 from the vehicular noise of a freeway or street, may not recover  
17 from the governmental entity any damages for such decrease in prop-  
18 erty values. This was the holding in People ex rel. Dept. of Public  
19 Works v. Symons, 54 Cal.2d 855 (1960). In Symons, the court quoted  
20 from Eachus v. Los Angeles, etc., Ry. Co., 103 Cal. 614, 617 (1894),  
21 as follows: "The constitution does not, however, authorize a  
22 remedy for every diminution in the value of property that is caused  
23 by a public improvement. The damage for which compensation is to  
24 be made is a damage to the property itself, and does not include a  
25 mere infringement of the owner's personal pleasure or enjoyment.  
26 Merely rendering private property less desirable for certain pur-  
27 poses, or even causing personal annoyance or discomfort in its use,  
28 will not constitute the damage contemplated by the constitution;  
29 but the property itself must suffer some diminution in substance,  
30 or be rendered intrinsically less valuable by reason of public use.  
31 The erection of a county jail or a county hospital may impair the  
32 comfort or pleasure of the residents in that vicinity, and to that

1 extent render the property less desirable, and even less salable,  
2 but this is not any injury to the property itself so much as an  
3 influence affecting its use for certain purposes. . . . " To  
4 the same effect is People ex rel. Dept. of Public Works v. Elsmore,  
5 229 Cal.App.2d 809 (1964).

6 A more recent case in point is Lombardi v. Peter Kiewit  
7 Sons, 266 Cal.App.2d 599 (1968), where it was held that a complaint  
8 did not state a cause of action in inverse condemnation. The com-  
9 plaint alleged that the plaintiffs were property owners next to a  
10 freeway, and that the building and operation of the freeway re-  
11 sulted in fumes, noise, dust, shocks and vibrations, causing mental,  
12 physical and emotional distress to the plaintiffs and damage to the  
13 real property. The court held that this complaint did not state a  
14 cause of action in inverse condemnation because no recovery may be  
15 had unless damage in a substantial amount to the property itself  
16 has been sustained. Lombardi cites as authority for its holding  
17 the cases of Albers v. County of Los Angeles, 62 Cal.2d 250 (1960);  
18 and Frustuck v. City of Fairfax, 212 Cal.App.2d 345 (1963).

19 In the Albers case, we have a situation in which the  
20 county construction of a road caused land slippage and damage to  
21 neighboring property owners. The Supreme Court upheld the trial  
22 court in giving judgment for damages in inverse condemnation  
23 against the County and in favor of the landowners. In Albers, the  
24 California Supreme Court interpreted the California constitutional  
25 provisions with respect to eminent domain to permit recovery for  
26 any actual physical injury to a landowner's property caused by the  
27 improvement. The court distinguished the situation presented in  
28 Albers from that presented in Symons by pointing out that in the  
29 latter instance the diminution in property values resulting from  
30 such factors as highway traffic noise does not involve any direct  
31 physical damage to the property itself but only a diminution in the  
32 enjoyment of such property.

1           Albers states the California law as going beyond the  
2 federal cases. The theory of the federal cases requires a physical  
3 invasion of realty by the governmental entity. This is a trespass  
4 theory, which requires an ouster of the owner of possession of  
5 some part of his property, whether it be the surface of his land  
6 or the airspace above. This physical invasion theory is the exclu-  
7 sive test under federal law. Albers can hardly be said to involve  
8 a trespass or a physical invasion of the landowner's property by  
9 the governmental entity. The emphasis in Albers is upon physical  
10 injury or damage to the realty. If there can be recovery for  
11 physical damage to realty without any actual trespass upon or  
12 physical invasion of the landowner's property by the governmental  
13 entity, it would seem to follow that an invasion of the air surface  
14 above the land by aircraft overflights would be sufficient to per-  
15 mit recovery in inverse condemnation, so long as there has been a  
16 loss in market value resulting from such aircraft overflight noise.  
17 It should be immaterial whether a loss of market value from air-  
18 craft overflight noise is looked upon as a "taking" or "damaging"  
19 of private property, since the California Constitution provides for  
20 eminent domain compensation where there is a "taking" or "damaging."  
21 (See California Constitution, Article I, section 14.)

22           A more serious question, however, is whether the  
23 California cases, such as Albers, Lombardi and Symons, restrict  
24 recovery in inverse condemnation in the aircraft noise situation  
25 to those cases in which the market value of private property has  
26 been diminished by noise from aircraft flyovers. The question to  
27 be determined is whether the rule of Symons means that aircraft  
28 noise falls in the same category as freeway motor vehicle noise, so  
29 that in the absence of an invasion of some portion of an owner's  
30 property, no recovery may be had for a decrease in market value due  
31 to noise, fumes, soot or vibrations of flyby jet aircraft as dis-  
32 tinguished from flyover jet aircraft. Is there any rational basis

1 for distinguishing freeway noise effects from jet aircraft noise  
2 effects?

3         One justification for the Symons rule in freeway noise  
4 cases is that property owners in the same position are treated  
5 equally. Thus, all property owners adjacent to the freeway are  
6 treated equally in not being permitted to recover for any loss of  
7 market value due to freeway noise or fumes. Such owners may  
8 logically be set apart from those whose property is actually taken  
9 by freeway construction, because the property owner whose property  
10 is actually taken is ousted and deprived of possession of that por-  
11 tion of his property. In the case of jet aircraft noise, however,  
12 it is pure fiction to claim that property owners directly under the  
13 flight pattern have been ousted from the use of the airspace above  
14 their properties by the flyover aircraft. In the case at bench,  
15 for example, the property owners whose properties are subject to  
16 flyover jet aircraft are still in possession and use of their  
17 single-family and multiple-unit properties to the same extent as  
18 are the owners who suffer from jet aircraft flyby noise only.

19         The theory of a "taking," enunciated by the federal cases,  
20 is deemed necessary because of the federal constitutional provision  
21 that a "taking" must occur in order to permit recovery from the  
22 Government. Since the California Constitution provides for compen-  
23 sation for a "damaging" of private property as well as for a  
24 "taking" of private property, California is not required to adopt  
25 the tenuous theory of the federal courts that an invasion of a  
26 landowner's property is necessary before a "taking" takes place.  
27 Albers leads the way to this result, since in Albers there was  
28 physical damage to the citizen's property but no real invasion or  
29 appropriation of space by the County.

30         There is every reason to believe that the citadel of  
31 Symons must crumble and fall in the face of changing conditions  
32 created by the advent of jet aircraft. The Symons rule must be

1 restricted in its application to the narrow factual situation  
2 presented in that and similar cases. In addition to Albers, other  
3 California Supreme Court decisions leave little doubt as to the  
4 demise of the Symons doctrine in other factual contexts. In  
5 People ex rel. Dept. of Public Works v. Ramos, 1 Cal.3d 261 (1969),  
6 Symons was distinguished, and any implications to the contrary  
7 found in People ex rel. Dept. of Public Works v. Elsmore, 229  
8 Cal.App.2d 809 (1964), was disapproved. But of greater signifi-  
9 cance is the language found in Loma Portal Civic Club v. American  
10 Airlines, Inc., 61 Cal.2d 582 (1964), a case in which property  
11 owners sought an injunction against various airlines to prohibit  
12 annoying flight operations over their lands. Damages were not  
13 sought against the owner and operator of the airport. Although  
14 denying the injunctive relief sought, the court made this highly  
15 significant observation: "Nothing herein is intended to be a  
16 determination of the rights of landowners who suffer from airplane  
17 annoyances to seek damages from the owners or operators of aircraft  
18 or to seek compensation from the owner or operator of an airport."  
19 (Loma Portal Civic Club, supra, at p. 591.)

20 Furthermore, there is a significant difference between  
21 the noise emanating from jet aircraft and that coming from automo-  
22 biles and trucks on a street or freeway. This difference is so  
23 pronounced that the legal consequences of jet noise should not be  
24 the same as the legal consequences of street and freeway noise of  
25 cars and trucks as enunciated by cases such as Albers, Lombardi and  
26 Symons. Scientific studies demonstrate that jet aircraft noise  
27 creates a severe disturbance to the comfort, enjoyment and use of  
28 residential property by the owners affected. The sounds emanating  
29 from cars and trucks on streets and freeways are simply minor con-  
30 trasted with the irritating and offensive sounds emanating from jet  
31 aircraft. Scientific evaluation of sound and noise establishes a  
32 significant difference between the two types of sounds and noises

1 and their effects upon human beings. Studies made by acoustical  
2 scientists and experts establish that the comparative offensiveness  
3 of different sounds is capable of measurement by accepted standards  
4 of numerical ratings.

5 Noise is simply one type of sound. Noise is commonly  
6 considered as unwanted sound because of the ear's reception and  
7 reaction to different kinds of sounds. In dealing with noise,  
8 whether it be from automobiles or aircraft, we are concerned with  
9 its annoyance and offensive effect upon people, and whether such  
10 noise results in a substantial interference with the comfort, en-  
11 joyment or use of one's home.

12 There are two components of sound in terms of the ear's  
13 reception and reaction. One is the intensity, magnitude or loud-  
14 ness of sound, and the second component is the frequency band or  
15 frequency range of sound. The high frequency components of sound  
16 are the elements which disturb human sensitivities. Although  
17 intensity or loudness is also involved in the human judgment of  
18 offensiveness, the high-frequency aspect of sound creates, by far,  
19 the greater irritating effect upon human beings. Thus, the screech  
20 of crayon upon a blackboard is a typical example of significant  
21 annoyance from a high frequency sound of low intensity or loudness.

22 The hue and cry over aircraft noise did not develop until  
23 the coming of jet aircraft. The explanation is that propeller air-  
24 craft creates sounds that are predominantly in the low frequency  
25 range, and low frequency sounds are not as disturbing to the ear as  
26 are high frequency sounds. Likewise, the sounds from automobiles  
27 and trucks traversing the streets and freeways are predominantly  
28 low frequency or low pitch sounds, and hence do not begin to have  
29 the annoyance and offensive consequence to the human ear as the  
30 high frequency sounds made by jet aircraft. Tests conducted by  
31 acoustical experts indicate that if the average person hears two  
32 sounds of the same intensity or loudness and one is a high frequency

1 sound and the other a low frequency sound, such person will believe  
2 that the high frequency sound is louder than the low frequency  
3 sound.

4 The sound frequencies, or the differences in high pitch  
5 tones or low pitch tones, are measured by the number of vibrations  
6 or cycles per second. The intensity or magnitude or loudness of  
7 sound is measured in terms of a logarithmic scale of decibels. The  
8 sound or noise from jet engines creates what is called a broad band  
9 noise in the sound spectrum. An orchestra with all of its instru-  
10 ments playing represents a picture of a broad band sound spectrum.  
11 That is, the flutes and piccolos make high frequency sounds, while  
12 the tubas, bases and cellos create low frequency sounds. The broad  
13 band sound of jet engines produces tones of various frequencies.  
14 However, the dominant tones of jet engines are in the high fre-  
15 quency range. It is this factor of the concentration of jet noise  
16 in the high frequency portion of the sound spectrum which creates  
17 the disturbing and annoying feature to the ear.

18 Acoustical experts have developed the term "Effective  
19 Perceived Noise Level," abbreviated EPNL. Effective Perceived  
20 Noise Level represents a noise scale which provides a means for  
21 comparing the relative noise content of sounds on the basis of the  
22 two components, intensity and frequency. The EPNL rating of noise  
23 sounds represents the annoyance or offensive value which hearers  
24 place on the noise spectrum. It represents the hearer's interpre-  
25 tation of the sound spectrum. It is a conversion of a physical  
26 measurement of sound in terms of frequency in cycles per second and  
27 intensity in decibels to a hearing interpretation of sound. Sound  
28 experts rate noise with an EPNL single numerical number in decibels,  
29 which represents the individual's reaction or annoyance to the par-  
30 ticular sound spectrum. The higher the EPNL rating, the greater  
31 the annoyance feature of the noise which is translated into the  
32 EPNL rating. The EPNL numerical rating, which is expressed in terms

1 of decibels, fixes a value which takes into account, where jet air-  
2 craft are concerned, factors such as the duration of the particular  
3 sound, the number of flights, whether the flights are daytime or  
4 nighttime flights, and the type of aircraft engine, such as the fan  
5 jet engine or the pure jet engine.

6 What are the annoyance or offensive features of noise?  
7 One of the important considerations is the influence of noise upon  
8 the ability of persons to communicate with each other. If the  
9 noise is such that persons engaged in conversation must talk  
10 louder to be heard, or get closer together to be heard, or cease  
11 talking altogether, then the noise has clearly interfered with  
12 normal communication between persons in a home. Interference with  
13 normal communication may also be considered in terms of its effect  
14 upon telephone conversations and the ability to hear and enjoy  
15 radio and television programs. Another annoyance feature of noise  
16 is involved if there is an interruption of a person's sleep.

17 The physical factors which go into the calculations to  
18 arrive at an EPNL rating are obtained in part from field tests,  
19 which record by means of instruments and cameras the jet noise from  
20 flyover and flyby aircraft at various land points in the takeoff  
21 and landing patterns. The EPNL value determined at a particular  
22 land location takes into consideration factors such as the altitude  
23 of the aircraft and its distance from the land location as it  
24 approaches and leaves the specific location on its flight, the  
25 duration of the sound, the type of sound produced by different  
26 types of aircraft and the number of flights of different types of  
27 aircraft per day and night.

28 The reason that the number of operations per day of jet  
29 aircraft is important in a determination of the EPNL rating of jet  
30 aircraft noise is that if the noise of a single aircraft is such  
31 that it interferes with normal communication in a home, an increase  
32 in the number of flights thereby increases the chances of an



1 interference with normal communication, and hence increases the  
2 annoyance effect of jets. Thus, several flights a day of jet air-  
3 craft may constitute little interference with normal communication.  
4 But if there are hundreds of flights per day, the interference with  
5 normal communication obviously becomes substantial.

6 An expert in applied acoustics and aircraft and vehicle  
7 noise sound measurements testified for the plaintiffs. This expert  
8 was the co-author of a study made by the firm of Bolt, Beranek and  
9 Newman, Inc., for the Federal Aviation Administration. The study  
10 was made to determine Noise Exposure Forecast areas resulting from  
11 aircraft takeoff and landing operations at the Los Angeles Inter-  
12 national Airport for the year 1965. The purpose of the study was  
13 to determine the effects of aircraft noise upon various land uses  
14 in areas surrounding the Los Angeles International Airport. To  
15 what extent is commercial use of land different from residential  
16 use insofar as aircraft noise is concerned? Determination of the  
17 effects of jet noise upon different land usages furnishes a good  
18 guide to better land-use planning and zoning in areas surrounding  
19 an airport. The Noise Exposure Forecast areas, hereafter referred  
20 to as NEF areas or contours, were determined and based upon aircraft  
21 noise measured numerically in terms of Effective Perceived Noise  
22 Levels, and which thus took into consideration factors such as the  
23 number of jet flights per day as compared to the number at night,  
24 the various types of jet aircraft, operating conditions, such as  
25 takeoff and landing thrusts and performance and the altitudes of  
26 aircraft at various locations in the takeoff and landing patterns.

27 The NEF areas delineated as a result of the study consti-  
28 tute a measuring of the noise environment surrounding the Los  
29 Angeles International Airport, using the EPNL standard of measure-  
30 ment. The study resulted in the designation of three NEF areas or  
31 zones. An inner zone, designated NEF Area "C," constitutes a zone  
32 of the highest noise level, in which jet aircraft would have the

1 greatest impact on people living within that area. An outer area,  
2 designated NEF Area "A," was the zone of the lowest noise level,  
3 in which it was determined that there should be no annoyance from  
4 aircraft noise to the persons living in that zone. In between  
5 these two NEF areas was a third zone, designated NEF Area "B." The  
6 middle zone was one in which it was concluded that it would be dif-  
7 ficult to predict to what extent persons living in that area would  
8 be affected by jet aircraft noise.

9 In the zone designated NEF Area "C," it was the recommen-  
10 dation of the authors of the study that no new single-family resi-  
11 dences or apartment houses should be constructed because of the  
12 severe noise impact from jet aircraft upon residential living in  
13 this area.

14 In the zone designated NEF Area "B," the opinion was that  
15 apartment house construction could be permitted with adequate  
16 soundproofing, but that new single-family construction should  
17 generally be avoided. So far as noise levels are concerned, the  
18 expert witness indicated that there was a 15 decibel difference in  
19 noise level rating resulting from jet aircraft between NEF Area "A"  
20 and NEF Area "C." In other words, in NEF Area "C," where jet air-  
21 craft noise had its greatest annoyance value to residents, the EPNL  
22 rating was 15 decibels higher than the noise level in NEF Area "A,"  
23 where there should be no substantial effect upon residential living.  
24 The three NEF areas depict, therefore, areas of significant differ-  
25 ence in terms of the deleterious effects of aircraft noise. The  
26 15 decibel difference between an area seriously affected by jet  
27 aircraft noise and an area not materially affected has significance  
28 because of the accepted principle that an increase of 10 decibels  
29 in the Effective Perceived Noise Level rating corresponds to a  
30 doubling of the annoyance effect upon persons subjected to a noise  
31 level increase of 10 decibels.

32 For the purpose of the case at bench, a profile map

1 delineating the NEF Areas "A," "B" and "C" was superimposed on geo-  
2 detic maps so that the location of the approximately seven hundred  
3 and fifty parcels of property involved in this litigation could be  
4 determined with reference to the three Noise Exposure Forecast  
5 areas.

6         The study of the impact of aircraft noise upon land use  
7 in the vicinity of the Los Angeles International Airport takes into  
8 account the effect of aircraft noise upon land users who are di-  
9 rectly under flight paths and also those who are to the side of  
10 flight paths. The NEF areas recognize that persons to the side of  
11 aircraft flying at an altitude of two hundred feet, for example,  
12 may be affected by the jet noise to an even greater degree than one  
13 whose land is immediately under a flight path at an altitude of  
14 five hundred feet. For example, the noise created by jet flyby air-  
15 craft at a lower altitude may produce an EPNL rating of 117 decibels  
16 while the noise from jet flyover aircraft at a higher altitude  
17 would produce an EPNL rating of 112 decibels, a significant differ-  
18 ence. Thus, some residents who suffer only from jet flyby noise  
19 are more seriously affected in terms of annoyance and property  
20 market value depreciation than other residents who suffer from jet  
21 flyover noise.

22         Since the noise from jet aircraft is capable of acceptable  
23 and recognized measurement in terms of its annoyance effect, no  
24 reasonable basis exists for making a legal difference between the  
25 effects caused by flyby aircraft and the same effects caused by fly-  
26 over aircraft. Recognition of this principle of equal treatment  
27 for the same effects from jet noise is the basis upon which NEF  
28 Area "C" has been designated as the area in which the Effective  
29 Perceived Noise Level is such that a substantial interference with  
30 residential living results from jet aircraft noise caused by the  
31 landings and takeoffs in the vicinity of Los Angeles International  
32 Airport.

1           It is suggested that unless recovery in inverse condemna-  
2 tion is limited to landowners suffering from flyover aircraft,  
3 there will be no reasonable way to draw a line to distinguish be-  
4 tween those landowners who would have a cause of action and those  
5 who would not. The development of the NEF contour areas provides  
6 a good means of drawing a reasonable line between those landowners  
7 who may establish a cause of action for inverse condemnation and  
8 those who may not. All landowners who suffer from substantially  
9 the same noise level are treated on an equal basis. Thus, all  
10 landowners located in NEF Area "C" are subjected to noise from jet  
11 aircraft which substantially interferes with residential comfort,  
12 enjoyment and use of their property and which is substantiated by  
13 the Effective Perceived Noise Level rating in decibels used to  
14 delineate NEF Area "C." To the extent that they are able to estab-  
15 lish that jet aircraft noise has diminished substantially the mar-  
16 ket value of their property, they should be entitled to recover  
17 damages in inverse condemnation. Those owners whose property is  
18 located outside of NEF Area "C" would not ordinarily be entitled to  
19 recover because the jet noise in areas outside of NEF Area "C" does  
20 not constitute normally a substantial interference with residential  
21 comfort, enjoyment and use of their property.

22           The testimony of the appraisers for the plaintiffs sub-  
23 stantiates the findings of the acoustical expert whose studies  
24 produced the suggested NEF Areas "C," "B" and "A." Without being  
25 aware of these areas, the appraisers testified that at the various  
26 locations of most of the parcels involved in this suit they heard  
27 the noise of the planes, felt vibrations at some locations, and  
28 observed the nearness of the planes and their flyover or flyby  
29 routes. Even though it is coincidental, it turns out that the bulk  
30 of the parcels of real property involved in this lawsuit is located  
31 in the area or zone designated as NEF Area "C."

32           One of the reasons advanced by those who favor limiting

1 recovery to those landowners who are in the overflight patterns  
2 only is that of administrative convenience. Unquestionably, admin-  
3 istrative convenience is served by a rule of law that can be easily  
4 administered by the courts. To hold that the right to possession  
5 of real property is the sole constitutionally protected interest in  
6 real property does have administrative convenience in its favor.  
7 However, since the Effective Perceived Noise Level rating offers a  
8 comparative measure of annoyance and offensiveness for areas sub-  
9 jected to the same kind of flight operations, the use of such a  
10 standard is not ruled out through administrative inconvenience. On  
11 the contrary, the Effective Perceived Noise Level rating scale  
12 offers a practical means for comparing noise environments. Condi-  
13 tions which occur immediately below the line of flight appear also  
14 at lateral points along the surface. The Effective Perceived Noise  
15 Level scales permit the making of practical noise estimations and  
16 depicting this situation by contour maps of the surface. This has  
17 been done through the development and delineation of NEF Areas "A,"  
18 "B" and "C" with respect to land adjacent to and near the Los  
19 Angeles International Airport.

20 The view of this Court that landowners who are damaged by  
21 noise from flyover or flyby aircraft should have a cause of action  
22 for inverse condemnation receives support from legislation enacted  
23 by the California Legislature. Section 1239.3 was added to the  
24 Code of Civil Procedure in 1965. This section provides that a con-  
25 demning agency, such as a city or airport district, may acquire  
26 airspace or an air easement in the airspace above the surface of  
27 property in the vicinity of an airport in which excessive noise,  
28 vibration, discomfort, inconvenience or interference with the use  
29 and enjoyment of real property produces a reduction in the market  
30 value of real property and occurs because of the operation of air-  
31 craft to and from an airport.

32 Prior to the addition of section 1239.3, the power to

1 condemn airspace and air easements was granted to condemning  
2 agencies operating airports only to protect runway approaches from  
3 encroachment of structures or vegetation. Section 1239.3 is a  
4 legislative recognition of the principle that jet aircraft noise  
5 may be such that a landowner's property adjacent to an airport may  
6 be decreased in market value by reason thereof and result in a  
7 cause of action for damages for inverse condemnation. Section  
8 1239.3 is significant because it does not, by its terms, limit the  
9 power of condemnation to the airspace in which overflights occur.  
10 Thus, this section appears to constitute a legislative recognition  
11 that landowners whose properties are reduced in market value by  
12 noise from jet flyby aircraft are entitled to consideration to the  
13 same extent as those who are affected by the noise from jet flyover  
14 aircraft.

15           Objection was made to the testimony of the expert who  
16 developed the NEF contour areas "C," "B" and "A" on the ground that  
17 his testimony pertained to the aircraft noise situation as it  
18 existed in 1965, whereas the thrust of plaintiffs' cause of action  
19 related to the aircraft noise situation in the year 1963. It is  
20 true that the 1965 noise problem would not be identical with the  
21 1963 situation. The evidence indicates that in 1965 there were  
22 113,061 jet landings at the Los Angeles Airport, inclusive of  
23 propeller jets, and that of this total number 86,855 were pure jet  
24 aircraft. In 1963, the total number of jet landings, inclusive of  
25 propeller jets, was 76,724, of which 59,776 were pure jet aircraft.  
26 The difference between the number of pure jet aircraft in 1965 as  
27 compared with 1963 is not so great that the 1965 study lacks signi-  
28 ficance for 1963 conditions. The increase in the number of jet  
29 flights in 1965 over 1963 would indicate an increase in the annoy-  
30 ance factor of jet noise between the two years, but such increase  
31 is not of sufficient quantity to materially change the jet noise  
32 annoyance effect of 1963. To state the matter in reverse, as will

1 be discussed infra, the number of jet flights to and from the  
2 Airport in 1963 was large enough to create a substantial interfer-  
3 ence with the comfort, enjoyment and use of residential property  
4 situated within NEF Area "C."

5 The land area described as NEF Area "C" consists of por-  
6 tions of the cities of Los Angeles, Inglewood, El Segundo and  
7 unincorporated Los Angeles County territory. That portion of NEF  
8 Area "C" east of the Airport is in the shape of a wedge, and may be  
9 generally described as follows: The narrowest and most distant  
10 point east of the Airport begins at Avalon Boulevard and Golden  
11 Avenue, and then stretches in a generally southwesterly direction  
12 toward the Airport. There is a gradual widening of NEF Area "C"  
13 from Golden Avenue and Avalon Boulevard to the Airport. This  
14 gradual widening results from the fact that airplanes are gradually  
15 descending as they approach the Airport for their landing. At  
16 Vermont Avenue, the northerly boundary of NEF Area "C" is approxi-  
17 mately at 94th Street, and its southern boundary is approximately  
18 at 103rd Street. At Western Avenue, the northern boundary is  
19 approximately at 95th Street, and the southern boundary is approxi-  
20 mately at 105th Street. At Crenshaw Boulevard, the northern bound-  
21 ary is approximately at 98th Street, and the southern boundary is  
22 approximately at 108th Street. At Hawthorne Boulevard and La Brea  
23 Boulevard, which are extensions of each other, the northerly bound-  
24 ary is approximately at 99th Street, and the southern boundary is  
25 approximately at 110th Street. At the San Diego Freeway, the  
26 northerly boundary is approximately at 99th Street, and the southern  
27 boundary is approximately at 111th Street.

28 The northerly boundary of NEF Area "C" to the west of the  
29 Airport is approximately along a line just south of Waterview Street  
30 and just north of Napoleon Street in the Playa del Rey community.  
31 The southerly boundary of NEF Area "C" to the south and west of the  
32 Airport is approximately at Mariposa Avenue in El Segundo.

1           The view of many courts, regardless of the theory of  
2 recovery, is that property owners must suffer substantial damage  
3 from jet noise in order to recover for inverse condemnation. This  
4 was the view enunciated by the Oregon court in the first appeal in  
5 Thornburg, which adopted a nuisance theory and permitted recovery  
6 by property owners who suffered damage from jet aircraft noise,  
7 whether the noise came from flyover aircraft or flyby aircraft.  
8 How is substantial damage to be defined? The cases dealing with  
9 the law of nuisance do not indicate any clear concept of what is  
10 meant by substantial damage. A reasonable view is one which holds  
11 that damage is substantial if it is measurable as contrasted with  
12 that which is merely nominal. Under this view, no particular  
13 dollar amount or percentage of reduction in the market value of  
14 property from jet noise is required for proof of substantial dam-  
15 age. Evidence that the market value of real property has been re-  
16 duced by jet noise to an extent which is reasonably measurable  
17 satisfies the requirement of substantial damage.

18           One of the defenses raised by the defendant City is that  
19 the Federal Aviation Act of 1958 has preempted for the federal  
20 government the control and regulation of the use of navigable air-  
21 space. The Federal Aviation Act of 1958, as amended, declares that  
22 there exists in behalf of the citizens of the United States a  
23 public right of freedom of transit through the navigable airspace  
24 of the United States. This act defines "navigable airspace" to be  
25 the "airspace above the minimum altitudes of flight prescribed by  
26 regulations issued under this chapter, and shall include airspace  
27 needed to insure safety in take-off and landing of aircraft."  
28 (48 U.S.C. § 1301 (24).) Defendant City correctly points out that  
29 it has no control over setting the altitudes at which aircraft may  
30 fly in takeoffs or in landings. However, the fact that the federal  
31 government establishes the altitudes of flight does not answer the  
32 question of whether state law may impose liability for damage



1 caused by jet aircraft noise. In Aaron v. United States, 311 F.2d  
2 798 (Ct. Cl. 1953), the federal court indicated that a right of  
3 recovery for damage from aircraft flyover noise was limited to  
4 flights below the navigable airspace designated by Congress. The  
5 theory that there can be no taking of private property and hence  
6 no liability for noise from aircraft within the designated airspace  
7 was considered to be derived from the precedents existing for high-  
8 ways. Every citizen is entitled to use the highways, regardless  
9 of the noise made by his automobile. Similarly, it was said that  
10 citizens should be entitled to fly in the navigable airspace with-  
11 out liability. It is obvious that airplanes must fly at low  
12 altitudes for a certain distance adjacent to the runways upon mak-  
13 ing a landing and upon takeoff. If we accept the defendant City's  
14 contention, it would mean that the only liability for aircraft  
15 noise, regardless of the amount of damage in terms of diminution in  
16 market value, would come from aircraft which flew at lower altitudes  
17 than those designated. In Aaron, although the federal court  
18 accepted the preemption theory generally, it rejected the conten-  
19 tion of immunity for flights within the navigable airspace at least  
20 to the extent of stating that a property owner's constitutional  
21 rights would have to be considered if it could be shown that a  
22 property owner suffered substantial impairment of his property  
23 rights from aircraft flights within the designated navigable air-  
24 space. With respect to state law imposition of liability, it could  
25 be reasonably asserted that if an owner's property is destroyed or  
26 damaged by aircraft noise, any immunity granted by Congress would  
27 be null and void because it would constitute a taking or damaging  
28 of private property without due process of law guaranteed by the  
29 Fourteenth Amendment to the United States Constitution.

30 State courts have rejected this theory of federal pre-  
31 emption for aircraft flying within the navigable airspace. In  
32 Thornburg, the Oregon court rejected the doctrine of federal

1   preemption creating an immunity from liability on the ground that  
2   such immunity is predicated on the view that there can be no tres-  
3   pass from planes flying in the navigable airspace, and, without a  
4   trespass, there can be no damage to the landowner. Since the  
5   Oregon court rejected the trespass and taking theory and relied  
6   upon a nuisance theory for recovery, it concluded that the nuisance  
7   theory would permit recovery for damage to property from aircraft  
8   noise even if flights are within the navigable airspace designated  
9   pursuant to congressional legislation. In Anderson v. Souza,  
10   38 Cal.2d 825, 839 (1952), it was stated that the federal declara-  
11   tion with respect to navigable airspace was "not intended to and do  
12   not divest owners of the surface of the soil of their lawful rights  
13   incident to ownership."

14         In Loma Portal Civic Club v. American Airlines, Inc.,  
15   61 Cal.2d 582 (1964), the California Supreme Court again rejected  
16   the contention of federal preemption. The Loma Portal Civic Club  
17   case determined that Congress had not indicated any intent to  
18   establish a federal preemption policy so that state action would be  
19   precluded because of an extensive pattern of federal regulation in  
20   the field. The court said that Congress had not indicated such a  
21   federal preemption because the Federal Aviation Act contained an  
22   express declaration that nothing therein contained should, in any  
23   way, abridge or alter remedies existing at common law or by  
24   statute. The court also reached the conclusion that there was no  
25   federal preemption by applying the test of whether the enforcement  
26   of state law would conflict with the purposes of the federal legis-  
27   lation, whether by frustrating an affirmative purpose or by inter-  
28   fering with a matter left intentionally unregulated by Congress.  
29   The court concluded that only a compelling federal interest, as  
30   where a state-created liability would clearly frustrate federal  
31   purposes, would justify inferring an intent on the part of Congress  
32   to nullify rights normally considered in the state-law sphere.

1 The definition and adjustment of property rights and the protection  
2 of health and welfare are matters primarily of state law. Thus,  
3 state courts may entertain wrongful death actions against airlines  
4 (Porter v. Southeastern Aviation Inc., 191 F.Supp. 42 [M.D. Tenn.  
5 1961]). In Huron Portland Cement Co. v. City of Detroit, 362 U.S.  
6 440 (1960), it was held that a city was not precluded from applying  
7 its antismoke ordinance to a ship whose boiler was built in com-  
8 pliance with federal safety requirements and had received federal  
9 approval after inspection. Huron indicates that the presence of a  
10 federal license is not, therefore, all-controlling in deciding the  
11 question of federal preemption.

12 ~~Closely allied with the defense of federal preemption is~~  
13 ~~the contention of defendant City that it cannot be held liable for~~  
14 ~~damage to property owners from jet aircraft noise because it has no~~  
15 ~~control over the airlines' choice of aircraft engines or the flight~~  
16 ~~altitudes on the glide paths to and from the Airport. Although~~  
17 ~~these are matters regulated by the Federal Aviation Administration,~~  
18 ~~they offer no valid defense to the defendant City. The United~~  
19 ~~States Supreme Court rejected such a defense in Griggs v. Allegheny~~  
20 ~~County, 369 U.S. 84 (1962). There it was held that Allegheny~~  
21 ~~County, which owned and operated the Greater Pittsburgh Airport,~~  
22 ~~was bound under the Fourteenth Amendment to the United States~~  
23 ~~Constitution to compensate a property owner who was damaged as a~~  
24 ~~result of aircraft flights over his land. The fact that approach~~  
25 ~~patterns were within the navigable airspace declared by Congress did~~  
26 ~~not preclude the holding that there had been a "taking" of private~~  
27 ~~property by the governmental owner and operator of the airport.~~  
28 ~~The reasoning of the Supreme Court was that the County exercised~~  
29 ~~the sole discretion to place the airport in the specific location,~~  
30 ~~and that had it not so located the airport, there would have been~~  
31 ~~no federal licensing of airplanes or fixing of navigable airspace~~  
32 ~~to and from the specific location. Thus, in the case at bench, the~~

1 City of Los Angeles made the decision to locate the Los Angeles  
2 International Airport where it now stands, and, as a result of that  
3 decision, must compensate those who own property adjacent to and  
4 near the Airport and who can establish that they have been damaged  
5 as a result of noise from jet aircraft.

6 One of the defenses asserted by the defendant City is that  
7 the defendant has acquired an easement by prescription because air-  
8 craft has used the airspace above plaintiffs' properties for more  
9 than five years preceding the filing of the complaint, and that the  
10 use of this airspace has been open and notorious and adverse to any  
11 interests claimed or asserted by plaintiffs. There is a serious  
12 question of whether it is legally possible for an operator and  
13 owner of an airport to obtain an easement by prescription with  
14 respect to aircraft flights over an owner's land. It is generally  
15 held that an easement in the air may not be obtained by prescrip-  
16 tion. See Hinman v. Pacific Air Transport, 84 F.2d 755 (9 Cir.  
17 1936). However, defendant City offered no evidence to support this  
18 defense, and the matter requires no further consideration.

19 Another defense urged by defendant City is that plaintiffs  
20 are barred from relief by virtue of the statute of limitations pro-  
21 visions found in sections 312, 318, 319 and 338 of the Code of Civil  
22 Procedure. Asserted with this defense is the claim that plaintiffs  
23 are barred from relief by failing to file a claim with the City  
24 within one year after the accrual of a cause of action as required  
25 by Government Code section 911.2, formerly section 644. The evi-  
26 dence establishes that some of the plaintiffs filed claims with the  
27 defendant City on January 2, 1964, and the remainder on February 7,  
28 1964. Obviously, if plaintiffs' cause of action arose more than one  
29 year prior to the above dates, the claims were not filed within the  
30 one-year period following the accrual of the cause of action. If  
31 the claims statute is applicable to a cause of action in inverse  
32 condemnation, and plaintiffs have not complied with the statute,

1 plaintiffs have failed to prove a cause of action, and the statute  
2 of limitations provisions of the Code of Civil Procedure need not  
3 be considered. On the other hand, if the plaintiffs filed claims  
4 with defendant City within the prescribed one-year period, plain-  
5 tiffs' complaint was filed within the requisite period following  
6 the denial of the claims so as to render inoperative any of the  
7 statute of limitations sections of the Code of Civil Procedure.

8 No authority has been cited by plaintiffs to justify a  
9 position that the one-year claims statute is inapplicable to a cause  
10 of action for inverse condemnation against a governmental entity.  
11 It appears to be an accepted rule of law that plaintiffs must file  
12 a claim for damages in inverse condemnation with the government  
13 agency under Government Code section 911.2 as a condition precedent  
14 to filing a lawsuit. See Peacock v. County of Sacramento, 271 A.C.A.  
15 987, 993 fn. 5 (1969). Plaintiffs in this action assert that their  
16 cause of action for damages from jet aircraft noise arose in the  
17 year 1963, and that their claims filed in January and February of  
18 1964, respectively, were thus filed in time. The defendant, while  
19 offering evidence tending to show that plaintiffs suffered no dam-  
20 age at all from jet aircraft noise, also offered evidence seeking  
21 to establish that any cause of action for damages from jet aircraft  
22 noise arose prior to the year 1963, with the consequent result that  
23 plaintiffs did not file their claims within the required one-year  
24 period. Although plaintiffs sought to prove that the year 1963 was  
25 the accrual date of their cause of action, no particular time in  
26 1963 was sought to be established as the accrual date for the cause  
27 of action.

28 The question of when does a cause of action arise for  
29 damages to real property due to aircraft noise is a difficult and  
30 troublesome one and not easy of solution. However, this Court is  
31 satisfied that the evidence in this case establishes that plaintiffs  
32 cause of action against the defendant City for damages to their

1 properties from jet aircraft noise accrued in the month of May 1963.  
2 It follows that the claims filed by plaintiffs on January 2, 1964  
3 and February 7, 1964, respectively, were filed within one year from  
4 the accrual of the cause of action. We now turn to a consideration  
5 of the evidence and authorities which support this conclusion.  
6 It cannot be contended with any degree of logic that when the first  
7 jet aircraft flew from the Los Angeles International Airport in  
8 1959 a cause of action arose at that time. It is true that the  
9 evidence before this Court demonstrates that the same type of jet  
10 aircraft engine, regardless of the number of flights and regardless  
11 when tested, makes the same broad-band noise in the sound spectrum  
12 and will produce the same numerical rating in terms of frequency in  
13 cycles per second and intensity decibels. However, the annoying,  
14 irritating and offensive factors involved in jet engine noise,  
15 insofar as interference with residential living is concerned, come  
16 into significant play because of the multiplication of the number  
17 of flights and the hours during the day or night when such flights  
18 take place. The number and timing of flights, as has been indicated  
19 before, become important because of the increased chances and oppor-  
20 tunities for interference with normal communication and sleep, to-  
21 gether with the ear's simple dislike of the type of noise generated  
22 by jet engines.

23       The increase in the number of jet landings and takeoffs  
24 at the Los Angeles International Airport has been a gradual develop-  
25 ment from year to year since 1959. With this gradual process taking  
26 place, the issue to be decided is, at what precise month and year  
27 did the jet noise become so offensive and annoying that it substan-  
28 tially diminished the market value of plaintiffs' properties so as  
29 to create a cause of action for damages in inverse condemnation? It  
30 is without dispute and a matter of common knowledge that persons  
31 living near major airports have disliked the sounds emanating from  
32 the whining and screaming jets almost from the moment of their

1 introduction. The evidence in the case at bench is to the effect  
2 that beginning with the year 1959 persons living within NEF Area  
3 "C" began to complain to Los Angeles city officials and other  
4 government officials about the noise from jet aircraft. The evi-  
5 dence also proves that in 1959 citizens adjacent to the Airport  
6 formed a Citizens Health and Welfare Council for the purpose of  
7 determining whether or not some group action was available because  
8 of the jet aircraft-noise condition. Individual plaintiffs attended  
9 meetings of this property owners' group from time to time, and  
10 individual plaintiffs joined the organization at various times.  
11 There is indication that prior to 1963 some of the plaintiffs may  
12 have believed that their properties were being reduced in market  
13 value by jet aircraft noise. Also, the Citizens Health and Welfare  
14 Council employed, prior to 1963, the attorneys who represent the  
15 plaintiffs in this case.

16 As the residents of the areas adjacent to the Airport made  
17 complaints to various government officials regarding the airport-  
18 noise situation, they were advised that steps to reduce the jet  
19 noise were being taken by groups such as the Los Angeles Airport  
20 Commission and the Sound Abatement Coordinating Committee, and that  
21 progress was being made in the direction of aircraft noise reduc-  
22 tion and abatement. However, the combination of these matters and  
23 events does not establish that a cause of action for damages result-  
24 ing from jet aircraft noise arose while these matters and events  
25 were taking place. A cause of action for damages to real property  
26 resulting from jet aircraft noise does not arise from a landowner's  
27 belief that his property has been damaged by such noise. During  
28 the time of the formulation of this opinion of damage by various  
29 plaintiffs, Los Angeles city officials and other government  
30 officials were indicating that steps were being taken to alleviate  
31 and abate the problem of jet aircraft noise.

32 One accepted and tenable view is that a cause of action

1 ~~for inverse condemnation arises at such time as the particular dam-~~  
2 ~~age factor involved becomes stabilized. Applying this principle to~~  
3 ~~jet aircraft noise as the damage factor, the inverse condemnation~~  
4 ~~cause of action arises at such time when it can be said with some~~  
5 ~~assurance that the annoyance factor of jet noise has become stabi-~~  
6 ~~lized and has reached the point of causing the market value of the~~  
7 ~~landowner's real property to be substantially reduced. This re-~~  
8 ~~quires a factual determination. A landowner's personal opinion~~  
9 ~~about whether and when his property became reduced in market value~~  
10 ~~is of little assistance to the trier of fact unless the particular~~  
11 ~~landowner is an appraiser, real estate broker or otherwise possesses~~  
12 ~~expertise in the field of market-value determination.~~

13 Prior to the time when this stabilization of jet aircraft  
14 noise and its substantial effect upon the market value of real  
15 property have been reached, there is annoyance and irritation from  
16 jet aircraft noise and, at some point, a beginning effect upon the  
17 market value of real property, but this is noncompensable damage at  
18 this fluid state of events. How many flights per year, month or  
19 day must exist before the noncompensable annoyance and damage ripens  
20 into a cause of action? In Jensen v. United States, 305 F.2d 444  
21 (Ct. Cl. 1962), the court espouses the view that the determination  
22 of when the point in time beyond noncompensable annoyance and dam-  
23 age is reached depends on making a judgment evaluating a variety of  
24 factors. The factors to be considered include "the frequency and  
25 level of flights; the type of planes; the accompanying effects, such  
26 as noise from falling objects; the use of the property; the effect  
27 on values; the reasonable reactions of the humans below; and the  
28 impact upon animals and vegetable life . . . ." (Jensen v. United  
29 States, supra, at p. 447.) In evaluating such factors, it is ob-  
30 vious that sound judgment and discretion must be exercised in order  
31 not to overstress some of these factors and neglect others. Some  
32 factors may be more critical than others under the circumstances  
33 involved.



1           That California has adopted this stabilization theory for  
2 determining when a cause of action arises for inverse condemnation  
3 is evidenced by the case of Pierpont Inn, Inc., v. State of  
4 California, 70 A.C. 293 (1969). In Pierpont Inn, a cause of action  
5 for inverse condemnation resulted from the construction and opera-  
6 tion of a freeway. At the time construction of the freeway began  
7 and at the time the landowner filed his claim with the state and  
8 commenced the action, section 644 of the Government Code required  
9 that a claim be presented to the State Board of Control "within two  
10 years after the claim first arose or accrued." The state contended  
11 that this statutory period began to run at the start of construction.  
12 The court, however, sustained the ruling of the trial court that the  
13 cause of action for inverse condemnation begins only when the situa-  
14 tion is stabilized, and here the completion and operation of the  
15 freeway constituted the stabilization time, not the commencement of  
16 the work. Hence, the claims were filed within the appropriate time  
17 limit. In reaching this conclusion, the California Supreme Court  
18 recognized that "There is a paucity of authority dealing with the  
19 problem of determining the exact date upon which a claim or cause of  
20 action for inverse condemnation arises. Prior to the age of the  
21 freeway, most inadvertent or intentional trespasses by authorities  
22 with the power to condemn were of such a nature that there was only  
23 a relatively brief interval of time between the first invasion upon  
24 the land and the completion of the project itself. Such authority  
25 as does exist, however, supports the holding of the trial court  
26 herein." (Pierpont Inn, Inc., supra, at p. 298.) Aaron v. United  
27 States, 311 F.2d 798 (Ct. Cl. 1963), also involved the problem of  
28 determining at what point in time landowners were affected by the  
29 noise from flights over their lands from an airport to such an  
30 extent as to create a cause of action for inverse condemnation. In  
31 that case, the trial judge fixed August 1953 as the beginning period  
32 for the cause of action and the statute of limitations to start  
33 running.

It is conceded that since the introduction of jet aircraft there has been a gradual increase in the number of jet aircraft takeoffs and landings at the Los Angeles International Airport. The number of jet aircraft landings, exclusive of propeller jets which are not true jet aircraft, for the years 1960 through 1965 are as follows:

<u>Year</u>	<u>Number</u>
1960	20,171
1961	33,932
1962	47,215
1963	59,776
1964	69,503
1965	86,855

By mathematical computation, the above yearly numbers produce an average of daily landings for the same years as follows:

<u>Year</u>	<u>Daily Landings</u>
1960	55
1961	93
1962	129
1963	164
1964	191
1965	238

The number of jet aircraft flights per day, month and year is obviously an important factor to be considered in determining when the noise situation stabilized to create a cause of action for inverse condemnation. A factor of even greater significance, however, is the difference in the character of the noise created by the pure turbojet engine and that created by the turbopan jet engine. The turbojet engine was introduced first. It has already been indicated that the jet aircraft engine produces a broad-band noise spectrum

1 dominated, however, by high frequency sound components. This  
2 description has reference to the turbojet engine, which also may be  
3 referred to as the pure jet engine. The turbofan jet engine was  
4 introduced after the use of the turbojet engine. The turbofan jet  
5 engine constituted a significant improvement in thrust in relation  
6 to fuel consumption. The turbofan jet engine is generally con-  
7 sidered a more efficient engine than the turbojet engine.

8         Unfortunately, however, the turbofan jet engine was not  
9 an improvement insofar as noise considerations are concerned. The  
10 turbofan jet engine produces essentially the same range of fre-  
11 quency components of sound as that produced by the pure or turbojet  
12 engine. The noise characteristics, however, of the two engines are  
13 startlingly different. The turbofan engine introduced a noise  
14 characteristic which may be described as a monstrous siren effect  
15 and also a whining sound. Another pertinent description is to say  
16 that the turbofan engine introduced a propeller effect into the pure  
17 turbojet engine. Although the sound frequency range of the two  
18 engines is substantially the same, the active band levels in  
19 decibels are vastly different. The noise from the turbofan engine  
20 is much greater in intensity or magnitude. The common expression  
21 would be that there is a loudness feature of the turbofan engine  
22 over the turbojet engine by quite a large amount. Since there is a  
23 higher intensity or magnitude of sound from the high frequency com-  
24 ponents of the turbofan jet engine, the conclusion follows that the  
25 turbofan jet engine produces a much greater annoying, irritating  
26 and offensive effect than the pure or turbojet engine produces.

27         Studies of the two types of engines made with aircraft at  
28 an altitude of 300 feet during landing operations established that  
29 at that altitude the Effective Perceived Noise Level rating in  
30 decibels of the four-engine turbofan jet aircraft was 117.5, while  
31 the four-engine turbojet aircraft was rated at 112. Thus, the noise  
32 magnitude of the turbofan jet aircraft was 5.5 decibels higher than

1 that of the turbojet or pure jet aircraft. This 5.5 decibel dif-  
2 ference in the Effective Perceived Noise Level rating is highly  
3 significant in the effect of aircraft noise upon the human reaction  
4 to sound. It has previously been pointed out that an increase of  
5 10 decibels in noise level is considered as a doubling of the annoy-  
6 ing and irritating effect of noise. In view of this relationship,  
7 an increase of 5.5 decibels in the noise level caused by the use of  
8 the turbofan jet engine means that the turbofan jet noise consti-  
9 tutes a 55 percent increase in annoyance and offensiveness to resi-  
10 dents affected over that produced by the turbojet aircraft. This  
11 means also that the screaming and whining sounds produced by turbo-  
12 fan jet aircraft have caused a 55 percent increase in interference  
13 with speech communication, telephone communication and radio and  
14 television reception.

15 Plaintiffs introduced evidence of a comparison of jet air-  
16 craft landings per day at the Los Angeles International Airport for  
17 the months of May and October of 1962 and for the months of May and  
18 October of 1963, with particular reference to the percentage of  
19 fan jet aircraft to the total number of jet aircraft. This study  
20 revealed that in the month of May 1962 there were 121 daily jet  
21 landings, of which 34 were fan jet aircraft, which constituted 28  
22 percent of the daily jet landings for that month. In October 1962,  
23 the daily landings of all jet aircraft were 133 in number, of which  
24 53 were fan jet aircraft, constituting 40 percent of the total jet  
25 aircraft landings. In the month of May 1963, the number of landings  
26 per day of all jet aircraft was 148, of which 78 were fan jet air-  
27 craft, constituting 53 percent of the total jet aircraft daily land-  
28 ings. In the month of October 1963, the total number of daily jet  
29 aircraft landings was 156, of which 84 were fan jet aircraft, con-  
30 stituting 54 percent of the total daily jet aircraft landings. This  
31 study indicates a substantial increase in the annoyance and offen-  
32 sive features of jet aircraft in 1963 over 1962. The daily landings

1 of jet aircraft increased from 121 in May of 1962 to 148 in May of  
2 1963. In the same yearly period, the number of fan jet aircraft  
3 increased from 34 to 78, which is more than a doubling of the num-  
4 ber of daily fan jet aircraft landings. The percentage of fan jet  
5 aircraft out of the total of all jet aircraft increased from 28  
6 percent to 53 percent during this same one-year period. The total  
7 increase in all jet aircraft landings in May of 1963 as compared to  
8 May of 1962 means there was a corresponding increase in the number  
9 of occurrences of irritating jet noise resulting solely from the  
10 increase in the number of aircraft flights. However, the more than  
11 doubling of the number of fan jets operating in May of 1963 over  
12 the number operating in May of 1962 introduced not only the greater  
13 frequency of annoying and irritating noise but also a greater annoy-  
14 ance effect because of the increase in the magnitude of the noise  
15 resulting from the greater use of fan jet engines in jet aircraft.  
16 Because of the two factors of an increase in the number of flights  
17 of all jet aircraft and an increase in the noise magnitude or  
18 intensity from the larger number of fan jet aircraft being used,  
19 the conclusion follows that from the standpoint of human body  
20 reaction, the annoyance effect from jet aircraft in 1963 was ap-  
21 proximately three times greater than it was in 1962.

22 It appears that the month of May 1963 is the most impor-  
23 tant consideration in comparing the year 1963 with the year 1962  
24 with respect to jet aircraft noise effects. From May 1963 to  
25 October 1963 the change in the number of daily fan jet aircraft  
26 being used was slight, and the percentage of fan jet aircraft to  
27 total jet aircraft changed only slightly. During this five-month  
28 period, the total number of daily fan jet flights changed from 78  
29 to 84, while the percentage of fan jet aircraft to total jet air-  
30 craft changed only from 53 percent to 54 percent. It thus appears  
31 that as of May 1963, primarily because of the increase in the use  
32 of fan jet aircraft, the annoyance and offensive features of jet

1 aircraft became stabilized. Testimony of the real estate appraisers  
2 for plaintiffs was to the effect that market prices of real property  
3 within NEF Area "C" showed a noticeable drop in 1963 compared to  
4 market prices in 1962. A finding is thus made by this Court that  
5 noise from jet aircraft, as it interfered with residential living  
6 and substantially affected the market value of real property in the  
7 area described as NEF Area "C," became stabilized in the month of  
8 May 1963. This is the date which this Court finds to be the time  
9 of accrual of plaintiffs' cause of action for damages for inverse  
10 condemnation. The claims of the plaintiffs filed with the defendant  
11 City in January and February of 1964 were filed, therefore, within  
12 the time required by law. It follows that the plaintiffs' cause of  
13 action is not barred by any statute of limitations provisions of  
14 the Code of Civil Procedure relied upon by defendant City.

15 Another defense urged by defendant City is that public  
16 convenience and necessity for more than five years preceding the  
17 filing of the complaint required, and still requires, the use of  
18 the airspace over and adjacent to the properties of plaintiffs for  
19 public aviation purposes. We all recognize that jet aircraft is a  
20 modern necessity and convenience for public travel. Some incon-  
21 venience, discomfort and annoyance from the noise of such aircraft  
22 must be borne and tolerated by citizens as a part of urban living.  
23 There is a limit, however, to the annoyance and damage from aircraft  
24 noise which residents must tolerate and bear without compensation.  
25 This limit is reached as to those property owners located in the  
26 vicinity of the flight paths of the landing and takeoff aircraft  
27 who suffer from jet aircraft noise out of proportion to other resi-  
28 dents of the community who are inconvenienced and annoyed by jet  
29 aircraft noise. Public convenience and necessity cannot be permitted  
30 to justify the damaging, without compensation, of the property of  
31 persons living in close proximity to the landing and takeoff air-  
32 craft patterns. However, because of the great public convenience

1 and necessity for jet aircraft and air travel, the public in general  
2 who benefit from the existence of jet aircraft and air travel must  
3 pay for this convenience and necessity through the compensation  
4 allowed to the few who are damaged by virtue of the chance selection  
5 of their place of abode.

6 We now come to the question of whether there has been  
7 proof of substantial diminution in the market value of the various  
8 parcels of property involved in this case. We have the testimony of  
9 two real estate appraisers for the plaintiffs. The approach of the  
10 appraisers for the plaintiffs was to select comparable areas not  
11 affected by jet aircraft noise, consider sales of comparable prop-  
12 erty in the unaffected areas, and then determine a fair market  
13 value of plaintiffs' parcels as of the year 1963, assuming that such  
14 parcels were not affected by aircraft noise. Then the appraisers  
15 considered 1962 and 1963 sales of comparable properties located  
16 within the area designated NEF Area "C" and reached an opinion of  
17 the fair market value of plaintiffs' parcels in the year 1963 as  
18 affected by jet aircraft noise. Using this difference in the fair  
19 market value of the plaintiffs' parcels of property as if they were  
20 not affected by the jet aircraft noise and the fair market value as  
21 affected by the jet aircraft noise, an opinion was reached as to the  
22 damage in terms of the dollar amount of the diminution in market  
23 value. On the other hand, the defendant City offered evidence to  
24 establish that there had been no diminution in market value of the  
25 plaintiffs' properties because of noise from jet aircraft.

26 The approach and opinions of plaintiffs' appraisers leave  
27 much to be desired. Thus, in seeking and using comparable proper-  
28 ties in areas not affected by jet aircraft noise, no consideration  
29 was given to the fact that plaintiff owners originally purchased  
30 their properties in the areas adjacent to the Airport and in the  
31 vicinity of the flight paths of propeller-driven aircraft. Such  
32 a location made these homes less desirable than residences located

1 on quiet streets unaffected by noise from freeways, busy streets or  
2 commercial development, which were used as unaffected comparable  
3 areas. For most of the parcels of property appraised, plaintiffs'  
4 appraisers reached opinions of a range of market values, both as  
5 unaffected by jet noise and as affected, rather than a single value.  
6 As an illustration, an opinion was stated that a particular parcel  
7 had an affected market value from \$22,000 to \$24,000 and an un-  
8 affected market value of \$25,000 to \$27,000. Then a single damage  
9 figure was given, such as \$2,000. The testimony indicated that the  
10 range of market values developed because one appraiser's opinion  
11 was the lower figure in the range, and the other appraiser's  
12 opinion was the higher figure. The appraisers were unable to  
13 testify as to which appraiser used the lower figure and which the  
14 higher figure. The testimony was that they appraised all of the  
15 properties as a team, but at the time of trial, they had no memo-  
16 randa or recollection of the separate opinion as to market value of  
17 each appraiser. The dollar amount agreed upon as the amount of dam-  
18 ages for each parcel appraised appeared to be a compromise reached  
19 by the two appraisers, in many instances, as the dollar amount of  
20 damages did not coincide with a figure reached by simply subtracting  
21 the market values as affected from the market values as unaffected.

22 The combined approach and compromise of the two appraisers  
23 for plaintiffs placed the Court in a difficult position in  
24 evaluating the opinions of the two appraisers. It would seldom  
25 happen in a trial that the opinions of two appraisers would be  
26 given equal weight by the trier of fact. Had each appraiser given  
27 his separate opinion of value, the plaintiffs' evidence of damages  
28 would have been more credible. In dealing with the appraisal of  
29 apartment houses and rental units as contrasted with single-family  
30 homes, plaintiffs' appraisers at no time used the two methods of a  
31 reproduction cost approach or the capitalization of income approach,  
32 even though in many instances it was conceded that sales of



1 comparable properties were not readily available. Also, in the  
2 appraisal of some rental units, plaintiffs' appraisers applied a  
3 gross multiplier method for the purpose of aiding them in the formu-  
4 lation of their opinions of value. It is true that this method does  
5 have some usefulness in the market place, but it is subject to the  
6 criticism that it is too rough a measure to be given much weight in  
7 arriving at market value opinions. Also, in appraising some mul-  
8 tiple units, plaintiffs' appraisers used a price per unit approach  
9 by computing the sales price per unit on sales of multiple units  
10 which were not really comparable to the apartment buildings being  
11 appraised. Opinions predicated on this approach are not entitled  
12 to a great deal of weight, since a per-unit sales price approach  
13 fails to adequately take into account varying factors, such as dif-  
14 ferences in sizes of units, in room size and arrangement and in the  
15 number of bedrooms per unit.

16         The approach of defendant City in presenting evidence  
17 tending to show that plaintiffs' properties were not reduced in  
18 market value by jet aircraft noise was entirely different from the  
19 approach of plaintiffs. An appraiser for defendant City testified  
20 and expressed an opinion that the residential properties in NEF  
21 Area "C" did not decrease in market value at all in 1963, and hence  
22 were not damaged by the noise from jet aircraft. The reasons given  
23 in support of this opinion were manifold. The City's appraiser  
24 made no appraisal of separate parcels of property. However, he  
25 studied that portion of NEF Area "C" east of the Airport, particu-  
26 larly with respect to factors of new construction of residential  
27 properties, loans made by lending institutions, whether rental units  
28 appeared to be fully occupied and whether the residential proper-  
29 ties appeared to be well kept to indicate a pride of ownership and a  
30 healthy economic condition. All of these factors were considered for  
31 the years 1963 to 1968. For the years indicated, his testimony was  
32 that permits for new construction amounted to \$3,957,956. These

1 permits included 868 residential units, of which there were 45  
2 apartment houses, 63 duplexes, 67 single-family residences and 32  
3 swimming pools. Loans were granted by lending institutions in sub-  
4 stantial amounts on the various types of residential properties,  
5 from single-family to large apartment houses and for the construc-  
6 tion of new swimming pools. The opinion of the City's appraiser  
7 was that all of these factors indicated that in the period 1963  
8 through 1968 there was a healthy condition with respect to residen-  
9 tial property in NEF Area "C," and that there was confidence in the  
10 real estate market on the part of persons owning residential prop-  
11 erty in this area. There was evidence tending to show that there  
12 were few "For Sale" or "For Rent" signs in this area, and no indica-  
13 tion of any abnormal vacancy factor in rental units. The evidence  
14 disclosed that many parcels in NEF Area "C" sold on the open market  
15 fairly soon after they were listed for sale with real estate brokers,  
16 a further indication of an active real estate market. There can  
17 be no dispute that NEF Area "C" has continued to be fully  
18 utilized for residential purposes in spite of the noise from jet  
19 aircraft.

20         The opinion of the City's appraiser that property parcels  
21 involved in this case suffered no market damage at all from jet air-  
22 craft noise is based in part on the results of price-trend studies  
23 of sales and resales of parcels in selected portions of NEF Area  
24 "C" east of the Airport and sale and resale price-trend studies of  
25 parcels in comparable areas outside of NEF Area "C." Four selected  
26 portions of NEF Area "C" east of the Airport were considered. The  
27 most distant portion from the Airport is a section immediately  
28 west of Western Avenue. A second portion is located between  
29 Crenshaw Boulevard on the west and Van Ness Avenue on the east. A  
30 third portion studied is located west of Crenshaw Boulevard, with  
31 Doty Avenue being the westerly line and Yukon Avenue the easterly  
32 line. The portion closest to the Airport is located between

1 Inglewood Avenue on the west and Mansel Avenue on the east. The  
2 three test areas outside of NEF Area "C" used by the appraiser in-  
3 clude two areas south of NEF Area "C" and one area north of NEF  
4 Area "C." One of the southerly areas is in Inglewood south of  
5 115th Street; between Crenshaw Boulevard on the west and Western  
6 Avenue on the east. A second test area is in Hawthorne south of  
7 El Segundo Boulevard, between Prairie Avenue on the west and Yukon  
8 Avenue on the east. The northerly test area may be described as  
9 the Overhill area, which is north of Slauson Avenue and immediately  
10 east of La Brea Avenue. The sales price-trend studies did not con-  
11 sider these sections separately. The three test areas were con-  
12 sidered together, and the four portions of NEF Area "C" east of the  
13 Airport were considered together. The period covered by these sales  
14 price-trend studies was from 1955 to the first few months of 1969.  
15 The method used was to consider purchases or sales and resales of  
16 the same parcels of property during the period covered. The differ-  
17 ence between the purchase price and resale price was taken, whether  
18 that constituted an increase or decrease in sales price. This dif-  
19 ference was converted into a gross percentage increase or decrease  
20 over the original purchase price. The number of years elapsing  
21 between the date of purchase and the date of resale was divided into  
22 the total percentage increase or decrease to obtain an average  
23 yearly price increase or decrease. For example, if a home had been  
24 purchased in 1960 for \$25,000 and resold in 1964 for \$30,000, the  
25 \$5,000 difference constituted a 20 percent increase in sales price  
26 over the original purchase price. The four-year period between the  
27 purchase date and resale date divided into 20 percent gives a five  
28 percent average annual increase in sales price. There were 341  
29 sales sets considered in the selected portions of NEF Area "C" east  
30 of the Airport, which also included 179 sales sets of parcels of  
31 property involved in this case. The test areas contained 402 sales  
32 sets.

1           The appraiser for the defendant City expressed an opinion  
2 that the sales price-trend studies indicated the same upward trend  
3 in sales prices for residential properties located in the portions  
4 of NEF Area "C" studied as was shown for residential properties in  
5 the test areas. The appraiser for the City testified that mathe-  
6 matically the sales price-trend studies indicated that in the por-  
7 tions of NEF Area "C" east of the Airport there was an average  
8 annual increase in sales prices of 4.57 percent for the period 1955  
9 to 1969, and that in the test areas used for comparison with NEF  
10 Area "C" east of the Airport, the average annual increase in sales  
11 prices amounted to 4.96 percent for the same period of years.

12           The same kind of sales price-trend study was made by the  
13 City's appraiser for a portion of NEF Area "C" west of the Airport  
14 and covered, generally the beach community known as Playa del Rey.  
15 The portion of Playa del Rey considered as a part of NEF Area "C"  
16 for this sales price-trend study is from Killgore Street on the south  
17 to Sterry Street on the north. The test areas used to compare with  
18 the subject area of Playa del Rey included a portion of Playa del  
19 Rey north of Sterry Street and a portion of Pacific Palisades called  
20 the Castellamare area. This comparative sales price-trend study  
21 indicated an average annual sales price increase in the subject area  
22 of Playa del Rey of 5.89 percent. There was an average annual in-  
23 crease in sales prices for the test areas compared with the Playa  
24 del Rey area of 5.68 percent.

25           Among the factors to be considered in evaluating the merit  
26 and worth of an appraiser's opinion of market value is the degree of  
27 comparability of the areas and sales selected for comparison with  
28 the property being appraised. So, also, the value, validity and  
29 worth of conclusions to be drawn from comparative sales price-trend  
30 studies depend, in part, upon how truly comparable are the areas  
31 selected for the control or test areas. As a part of the two days  
32 spent by this Court in viewing the areas involved in this litigation,

1 the Court viewed the various test areas used by the appraiser for  
2 the City and portions of areas used by the appraisers for the  
3 plaintiffs to obtain their comparable sales. The Court found little  
4 comparability between the Castellamare area of Pacific Palisades  
5 and the subject Playa del Rey area located in the westerly portion  
6 of NEF Area "C." The subject Playa del Rey area appeared to the  
7 Court to be a much more desirable residential area than the  
8 Castellamare area, considering such factors as the ocean view, the  
9 size of the lots and the land topography.

10 In testifying regarding his visits through NEF Area "C"  
11 east of the Airport, the appraiser for the City said that he did  
12 not notice and was not particularly aware of the planes or of noise  
13 from them as they proceeded toward the Airport for landing. He  
14 testified that at no time did he have to stop talking because of  
15 any jet aircraft noise. This testimony is incredible. It is in-  
16 conceivable to the Court, in view of what the Court saw and heard  
17 relative to the flow of jet aircraft over NEF Area "C" to make their  
18 landings. How any person with normal sight and hearing could be in  
19 the area for any period of time and not be acutely aware of the  
20 flow of jet aircraft traffic and the screaming noise coming there-  
21 from, is beyond comprehension.

22 In interrogatories submitted to plaintiffs by defendant  
23 and in answers to such interrogatories, information was given as to  
24 the date of purchase and the purchase price of the parcel involved,  
25 together with the sales date and sales price if the particular  
26 plaintiff had sold his parcel of property either before or subse-  
27 quent to the commencement of the lawsuit. This information was  
28 given to the appraiser for the City, who testified that an analysis  
29 of this information indicated that there was a 4.01 percent average  
30 annual price increase of the plaintiffs' properties based on this  
31 submitted information. The appraiser for the City further testified  
32 that the sales price-trend studies would not indicate that any

1 particular parcel of property had a market value as of any particu-  
2 lar date; that the average annual price increase would not indicate  
3 any actual market price increase for any particular year, and that  
4 no inference could be drawn of whether there was a particular market  
5 price decrease or increase in any particular year involved in the  
6 period studied, which included the years 1962 and 1963. The  
7 appraiser for the City made clear that the average annual percentage  
8 price increase shown in the sales price-trend studies would not  
9 lead to a conclusion that this percentage represented an actual per-  
10 centage increase in the market value of property between the years  
11 1962 and 1963.

12 Comparing the average yearly price increase of 4.57 per-  
13 cent for residential property located in the portions of NEF Area  
14 "C" east of the Airport with the average yearly price increase of  
15 4.96 percent for the residential property located in the selected  
16 comparable control areas, the average yearly price increase for the  
17 portions of NEF Area "C" studied was 0.39 percent less than the  
18 average yearly price increase for the test areas. The period  
19 studied was from 1955 to the first few months of 1969. This con-  
20 stitutes a total period of fourteen years and a few months. If we  
21 consider the fourteen-year period as a whole and the average yearly  
22 difference in sales price increase of 0.39 percent between the sub-  
23 ject area and the test areas, we find that the gross or total sales  
24 price increase in the subject NEF Area "C" east of the Airport was  
25 approximately 5.50 percent less than the gross sales price increase  
26 for the test areas. In view of the fact that the average annual  
27 percentage increase does not indicate the actual status of the real  
28 estate market in any particular year, the percentage increase for  
29 the entire fourteen-year period considered becomes significant. It  
30 might well be that the approximate 5.50 percentage difference in the  
31 sales price increase between the subject area and the test areas re-  
32 flects this kind of percentage decline in real estate market prices

1 in one particular year in the subject area. The fact that for the  
2 entire period studied there is this type of percentage difference  
3 lends support to the contention of plaintiffs that there was a sub-  
4 stantial decrease in the market value of residential properties  
5 located in NEF Area "C" in the year 1963.

6 The contention of plaintiffs with respect to a diminution  
7 in the market value of residential property within NEF Area "C"  
8 resulting from jet aircraft noise is likewise bolstered by the con-  
9 clusions of the City's appraiser regarding the sales and resales of  
10 plaintiffs' parcels gathered from the interrogatories and answers  
11 thereto. The average annual sales price increase of 4.01 percent  
12 is considerably less than the average annual sales price increase  
13 of 4.96 percent obtained from the study of the test areas used by  
14 the appraiser. The average annual sales price increase of 5.89 per-  
15 cent found in the Playa del Rey portion of NEF Area "C" is higher  
16 than the average annual sales price increase of 5.68 percent found  
17 in the test areas used for comparison. In view of the Court's find-  
18 ing that the test areas used for comparative purposes with the  
19 Playa del Rey portions of NEF Area "C" exhibited considerable dif-  
20 ferences, a comparison of the two average annual percentage sales  
21 price increases is not particularly helpful. This comparison, there-  
22 fore, does not demonstrate or lead to the conclusion that the prop-  
23 erties in the Playa del Rey portion of NEF Area "C" were not ad-  
24 versely affected in market value by the noise from jet aircraft  
25 taking off from the Airport.

26 Comparing the average annual sales price increase of 5.89  
27 percent in the Playa del Rey portion of NEF Area "C" with the aver-  
28 age annual sales price increase of 4.57 percent in the portion of  
29 NEF Area "C" east of the Airport tends to indicate that the Playa  
30 del Rey community has had a much better real estate market condition  
31 than the communities east of the Airport. But this does not lead  
32 to a conclusion that noise from jet aircraft landings has a greater

1 impact upon the real estate market than noise from jet aircraft  
2 takeoffs. The testimony of the experts on sound and noise indi-  
3 cates that there is very little difference between the Effective  
4 Perceived Noise Level rating of jet aircraft on takeoffs as con-  
5 trasted with landings. Although the evidence convinces the Court  
6 that some residential property in the Playa del Rey portion of  
7 NEF Area "C" was adversely affected in market value by noise from  
8 jet aircraft in 1963, the evidence likewise establishes that the  
9 Playa del Rey community was not as seriously affected in market  
10 value depreciation as those areas located east of the Airport.

11 Another factor which concerned the Court in evaluating  
12 the appraisers' opinions in this case was the use of 1962 sales of  
13 comparable property within the subject area involved. The  
14 appraisers for the plaintiffs used 1962 sales along with 1963 sales  
15 of properties in NEF Area "C" to support their opinion of market  
16 value diminution in 1963 as a result of jet aircraft noise. They  
17 explained their use of 1962 sales by stating they considered such  
18 sales prices as indicating only a slight effect of jet noise upon  
19 market values as compared to 1963 comparable sales indicating a  
20 major effect of jet aircraft noise upon market values, and that  
21 this difference was duly considered in aiding them to arrive at  
22 their opinions of the market values of the plaintiffs' properties  
23 being appraised as of 1963. No indication was ever given of how  
24 much, in terms of dollars or percentages, the 1962 comparable sales  
25 prices represented in depreciated market value from jet aircraft  
26 noise.

27 Since the time of the substantial effect upon market value  
28 from jet aircraft noise occurred in 1963, it would appear that a  
29 helpful method of determining the effect of jet aircraft noise upon  
30 market value in 1963 would have been to consider sales prices of  
31 property within NEF Area "C" which took place in 1961 and 1962 and  
32 compared those sales prices with sales prices of comparable property



1 for the years 1963 and 1964. Such a comparison of sales prices  
2 should produce some reflection of the effect of jet aircraft noise  
3 upon the market value of properties located within the affected  
4 area. However, no effort was made by either the appraisers for the  
5 plaintiffs or the appraiser for the defendant City to use this  
6 approach of comparing sales prices within the affected area before  
7 the advent of jet aircraft noise with the sales prices of comparable  
8 property taking place after the advent of jet aircraft noise. One  
9 objection to this approach would be that there might be an absence  
10 of a sufficient number of sales of comparable properties to make  
11 such a comparison meaningful. But there was no testimony to indi-  
12 cate that there was any lack of comparable sales before 1963 to  
13 preclude using this approach to help support the opinion that mar-  
14 ket values were substantially affected by jet noise in 1963 or to  
15 support the opinion that there was no substantial effect upon mar-  
16 ket values in 1963 from jet aircraft noise.

17 The parties stipulated that one of the north runways of  
18 the Airport, designated 24L, was used sporadically from 1960 to  
19 1967, and that not until 1968 did this specific runway go into  
20 regular use by jet aircraft. The parties also stipulated that the  
21 second north runway, the most northerly one, designated 24R, is not  
22 yet fully constructed and hence has never been in use. In view of  
23 this stipulation, it is apparent that property in the Playa del Rey  
24 community was not affected in 1963 by any jet aircraft takeoffs from  
25 the north runways of the Airport. Property located in the northerly  
26 section of NEF Area "C" in Playa del Rey are much closer to the  
27 north runways than they are to the south runways. These are factors  
28 which must be taken into account in determining whether these resi-  
29 dential properties in Playa del Rey suffered any market value dimi-  
30 nution in 1963. The evidence convinces the Court that these nor-  
31 therly located Playa del Rey parcels of property were not substan-  
32 tially adversely affected in 1963 by any jet aircraft noise. These

1 are the parcels of property in Playa del Rey situated north of  
2 Century Boulevard. These parcels are too distant from the south  
3 runways to be materially affected by noise from jet aircraft taking  
4 off from these runways. We are not concerned in this case with the  
5 effects of noise from jet aircraft taking off from the north runway,  
6 24L, beginning regularly in 1968.

7         Only a few of the approximately one thousand five hundred  
8 plaintiffs have testified in this case. Some of the plaintiffs who  
9 testified live in the Playa del Rey area and others live in the por-  
10 tion of NEF Area "C" that is east of the Airport. On the whole,  
11 their testimony related the annoyance features of jet aircraft noise  
12 upon normal communication in the home, upon enjoyment of radio and  
13 television programs, upon telephone communication and the effects  
14 of smoke, soot and debris left in the wake of jet aircraft. This  
15 evidence by the plaintiffs who testified was substantiated by the  
16 two appraisers for plaintiffs who testified to seeing and hearing  
17 the jet aircraft at each parcel of property they appraised.

18         Although the Court finds that most of the properties in-  
19 volved in this lawsuit and located in both the easterly and westerly  
20 portions of NEF Area "C" have suffered substantial damage by reason  
21 of jet aircraft noise culminating and stabilized in 1963, with  
22 respect to a number of the parcels of properties involved in this  
23 lawsuit, the plaintiffs have simply failed to establish that they  
24 have been substantially damaged by jet aircraft noise. Conse-  
25 quently, as to these properties, no recovery will be permitted.

26         It is the position of the defendant City that an award of  
27 compensation should carry with it the grant of an easement to the  
28 defendant City for jet aircraft flights as flyovers or flybys with  
29 respect to the particular parcel of real property. This result is  
30 dictated by the legislative recognition of such an easement found  
31 in section 1239.3 of the Code of Civil Procedure.

32         The question is raised, however, of whether such a flight

1 easement in airspace is permanent, so far as the damage to the prop-  
2 erty so affected is concerned. If the City is granted an easement  
3 as a result of compensation awarded to property owners, is there  
4 any recourse if the number of jet flights are increased or the  
5 character of the jet engines is changed so that the Effective Per-  
6 ceived Noise Level is increased, resulting in a further reduction  
7 in the market value of property over and above that found to exist  
8 by virtue of the judgment? The general law of easements would seem  
9 to have application in this situation. So long as the burden of  
10 the easement upon the property owner is not increased, there would  
11 be no basis for additional relief. However, if the property owner  
12 is able to establish that subsequent increases in the number of jet  
13 flights using the airspace or the character of the noise has changed  
14 so that there is a substantial increase in the Effective Perceived  
15 Noise Level, with a resulting further diminution in the market value  
16 of the affected property, the property owner should be entitled to  
17 recover the additional damage in such a case. The burden of proof  
18 would be upon the property owner to establish that there has been  
19 such an increase in the number of flights or a change in the  
20 character of the noise from factors in addition to, or separate  
21 from, the number of flights to justify a cause of action for addi-  
22 tional damage. In this case, the award of compensation and the  
23 corresponding easement are determined for conditions existing in  
24 the year 1963.

25        Listed below in Schedule A are the parcels of real property  
26 which the Court finds to have been substantially damaged in terms  
27 of market value depreciation by noise from jet aircraft, and the  
28 amount of damage which the Court finds each parcel listed to have  
29 suffered as of May 1963. The parcels are listed in accordance with  
30 the designation given by the appraisers who testified for plain-  
31 tiffs. The type of property is indicated by appropriate abbrevia-  
32 tions. A single-family home is indicated by the abbreviation

"S/F," and multiple-family property is identified by the number of units involved, such as a four-family property being identified with the abbreviation "4/U."

SCHEDULE A

	<u>Property Designation</u>	<u>Address</u>	<u>Type of Property</u>	<u>Amount of Damages</u>
7	A-1	10329 Redfern Ave.	S/F	\$ 900
8	A-2	10311 Felton Ave.	S/F	900
9	A-3	10312 Ocean Gate Ave.	S/F	950
10	A-4	4921 W. 104th St.	2/U	1,000
11	A-5	10329 Inglewood Ave.	6/U	2,400
12	A-6	10209 Irwin Ave.	S/F	900
13	A-7	10307 Felton Ave.	S/F	700
14	A-8	10211 Felton Ave.	S/F	1,000
15	A-9	10218 Burl Ave.	S/F	900
16	A-10	10224 Burl Ave.	S/F	900
17	A-11	10225 Ocean Gate Ave.	S/F	950
18	A-12	10218 Redfern Ave.	S/F	950
19	A-13	10208 Redfern Ave.	S/F	950
20	A-14	10324 Buford Ave.	S/F	700
21	A-15	10318 Redfern Ave.	S/F	950
22	A-16	5005 W. 104th St.	2/U	1,000
23	A-17	10119 Irwin Ave.	S/F	950
24	A-18	10300 Redfern Ave.	S/F	950
25	A-19	10318 Burl Ave.	S/F	900
26	A-20	10329 Felton Ave.	S/F	950
27	A-21	10133 Felton Ave.	S/F	900
28	A-24	10205 Felton Ave.	S/F	900
29	A-25	5147 W. 104th St.	2/U	1,000
30	A-26	10137 Felton Ave.	2/U	900
31	A-27	10321 Redfern Ave.	S/F	900
32	A-28	10218 Ocean Gate Ave.	S/F	900

Pages 52 through 73, containing further schedules of property damaged and undamaged (insufficient evidence to establish a loss of market value as a result of aircraft noise), have been omitted in the interest of economy.

	<u>Property Designation</u>	<u>Address</u>	<u>Type of Property</u>
2	P-50	115 Sandpiper St.	S/F
3	P-54	224 Argo St.	S/F
4	P-55	7911 Rindge Ave.	S/F
5	P-56	7934 Vista del Mar	S/F
6	P-58	328 Sterry St.	S/F
7	P-59	230 Ellen St.	S/F
8	P-60	324 Sterry St.	S/F
9	P-61	326 Waterview St.	S/F
10	P-63	236 Grand Pre Blvd.	S/F
11	P-68	7936 Rindge Ave.	S/F
12	P-71	114-18 Deauville St.	4/U
13	P-72	120-26 Deauville St.	
14	P-76	7710 Rindge Ave.	S/F
15	P-77	7944 Rindge Ave.	S/F
16	P-78	131 Ivalee St.	S/F
17	P-80	123 Sandpiper St.	S/F
18	P-84	7323 Earldom Ave.	S/F
19	P-85	7608 Vista del Mar	S/F

The judgment to be rendered in this case will be an interlocutory judgment. Further proceedings must be conducted to determine which plaintiffs are entitled to a final judgment for damages with respect to the specific parcels of real property as set forth in Schedule A. The evidence disclosed that various plaintiffs sold their parcels of real property during the period from 1962 to the date of trial. It is alleged in the complaint that certain plaintiffs claim a right of action against defendant City of Los Angeles by virtue of being the owners in fee of their parcels of real property; that the rights of other plaintiffs exist by virtue of equitable ownership in their parcels of real property resulting from contracts of purchase, and that other plaintiffs claim a cause of action for damages by virtue of written assignments in their favor. The

1 Court's determination herein that a particular parcel of real prop-  
2 erty has been damaged by noise from jet aircraft in a specified  
3 amount is not to be construed as a determination that any particular  
4 plaintiff is entitled to a final judgment in his favor. A par-  
5 ticular plaintiff's right to receive the damage amount determined  
6 herein for a particular parcel of real property must be established  
7 in subsequent proceedings to be held in this case.

8 A judgment is to be prepared in accordance with the views  
9 expressed herein.

10 DATED: February 5, 1970.

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13 BERNARD S. JEFFERSON

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Bernard S. Jefferson  
16 Judge of the Superior Court  
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