DISTRICT COURT, COUNTY OF BOULDER, COLORADO **Boulder County District Court** **1777 6th Street, Boulder, Colorado 80302**	
Plaintiffs: CITIZENS FOR QUIET SKIES**,** KIMBERLY GIBBS, TIMOTHY LIM, ROBERT YATES, SUZANNE WEBEL, JOHN BEHRENS, CARLA BEHRENS, and RICHARD DAUER **v.** **Defendant:** MILE-HI SKYDIVING CENTER, INC.	**▲COURT USE ONLY▲** **Case Number:** 2013CV031563
Randall M. Weiner, #23871 Annmarie Cording, #42524, Of Counsel **Law Offices of Randall M. Weiner, P.C.** 3100 Arapahoe Avenue, Suite 202 Boulder, Colorado 80303 Phone Number: 303-440-3321 Fax Number: 720-292-1687 randall@randallweiner.com acording@cordinglaw.com The Law Office of Matthew B. Osofsky, Esq. Matthew Osofsky, #34075 3100 Arapahoe Avenue, Suite 202 Boulder, Colorado 80303 Phone Number: 303-440-3321 mosofsky@live.com	
TRIAL BRIEF	

The above-named plaintiffs, (collectively "Plaintiffs") by and through counsel, Law Offices of Randall M. Weiner, P.C. and The Law Office of Matthew B. Osofsky, Esq., hereby file their Trial Brief and in support thereof state:

I. SUMMARY

Plaintiffs proceed to trial on claims of private nuisance, negligence and negligence *per se*.[1] These claims are well defined under Colorado law and the elements are discussed below. The principle legal conflict in this case concerns federal preemption. Federal law does not preclude parties from seeking damages for aviation noise and does not set standards for torts arising under state law. While federal law does preempt local laws which interfere with the Federal Aviation Administration's (FAA's) ability to provide for aircraft safety and protect the interests of interstate commerce, the relief requested by Plaintiffs herein does not implicate these concerns. "…Congress, through the FAA, did not take the subject of airplane interference with property rights and give it exclusively to the federal courts." *Casey v. Goulian*, 273 F.Supp.2d 136, 140 (D. Mass. 2003) (Court holds it lacks jurisdiction over suit for state law nuisance claims and remands to state court).

II. NEGLIGENCE AND NEGLIGENCE *PER SE*

To recover on a negligence claim, a plaintiff must establish the existence of a legal duty on the part of the defendant, a breach of that duty, causation, and damages. *United Blood Servs., Inc. v. Quintana*, 827 P.2d 509, 519 (Colo. 1992); *Observatory Corp. v. Daly*, 780 P.2d 462, 465 (Colo. 1989); *Perreira v. State*, 768 P.2d 1198, 1208 (Colo. 1989); *Leake v. Cain*, 720 P.2d 152, 155 (Colo. 1986). Generally, a legal duty to use due care arises in response to a foreseeable and unreasonable risk of harm to others. *Quintana*, 827 P.2d 509; *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989). There is no question that Colorado courts have authority to award damages caused by negligence during airplane operations. *Huddleston v. Union Rural Elec. Ass'n*, 841 P. 2d 282

[1] While Plaintiffs' negligence *per se* claim concerning the Longmont Ordinance was inadvertently omitted from the TMO, it remains live by reason of the Court's December 31, 2014 Order. Rule 16(f)(3)(I) states that withdrawn or resolved claims "shall be designated," which was not done. Plaintiffs' Motion to Modify the TMO is pending.

(Colo. 1992) (involving negligence of contractor charter pilot); *Murphy v. Colorado Aviation, Inc.*, 588 P. 2d 877 (Colo. App. 1978); *Texair Flyers, Inc. v. District Court, First Jud. Dist.*, 506 P. 2d 367 (Colo. 1973) (personal representative of deceased nonresident tortfeasor pilot was properly subject to jurisdiction in Colorado in negligence action brought by surviving spouses of airplane crash victims).

In this case, the Defendant has failed to act in the manner consistent with a reasonably careful aviator acting under similar circumstances and seeking to protect others from harm. *See* C.J.I. 9:6. Defendant's activities also violate the noise restrictions of Longmont Code § 10.20.100. The maximum noise levels allowed under the code are evidence of the unreasonable nature of Defendant's conduct and/or establish a basis for a finding of negligence *per se*. *See* C.J.I. 9:14.

In Colorado, the community that establishes the professional standard of care can differ according to the profession. It can be a local standard, a standard that refers to the local community and similar communities, or a national standard. *Quintana*, 827 P.2d at 520. One of the primary issues in this case is whether the Defendant's conduct is harmful within the local community. Therefore, the appropriate standard of care is established by what is considered reasonable among pilots of propeller-driven small airplanes acting within in the local or similar communities. Regardless of the reference community, the standard of care is established by expert testimony. *Id.*

Defendant contends that the FAA establishes the standard of care and compliance with FAA regulations rendering it immune from any claim that it has failed to exercise due care. Compliance with safety regulations, while a factor that should be considered on the issue of due care, is not conclusive proof of due care. *Blueflame Gas, Inc. v. Van Hoose*, 679 P.2d 579, 591

(Colo.1984) (compliance with administrative safety regulation by propane supplier does not conclusively establish highest degree of care was exercised, citing § 288C of Restatement (Second) of Torts (1965), which states that compliance with statute or administrative regulation is not preclusive of finding of negligence); *Yampa Valley Elec. v. Telecky*, 862 P. 2d 252 (Colo. 1993). Moreover, the Colorado Supreme Court has explained why it is not appropriate to assume that reasonable conduct is adequately defined by the rules of an organization which has a vested interest in avoiding lawsuits for practitioners by narrowly defining negligence. *Quintana*, 827 P.2d at 520 ("If the standard adopted by a practicing profession were to be deemed conclusive proof of due care, the profession itself would be permitted to set the measure of its own legal liability…."). While the FAA does not set noise standards to help aviators avoid negligence action, *Quintana* suggests that this Court should consider the motives for or context of establishing a standard. The FAA noise standards were developed within the context of a noise mitigation grant program. 49 U.S. Code §§ 4750-510. The federal government "may incur obligations to make grants" for noise mitigation programs when the FAA noise standards are exceeded. 49 U.S. Code § 47504(c). Thus, the FAA established noise standards which would not cripple the operation of commercial airports or overextend the grant program. However, there is no reason for this Court to accept noise standards that determine where federal noise mitigation grant money is spent around commercial airports as the Colorado standard for reasonable conduct in the rural and residential areas around a municipal airport.

Plaintiffs will establish through expert testimony that the standard of care among aviators in similar circumstance to those found here requires pilots to take all safe measure possible to avoid damaging the community with unreasonable noise.

A party may recover under a claim of negligence *per se* if it is established that the defendant violated the statutory standard and the violation was the proximate cause of the injuries sustained. *Lyons v. Nasby*, 770 P.2d 1250, 1257 (Colo.1989); *Largo Corp. v. Crespin*, 727 P.2d 1098, 1107 (Colo.1986).

III. NUISANCE

Colorado law allows property owners to obtain damages arising from nuisance. *Pub. Serv. Corp. of Colo. v. Van Wyk*, 27 P.3d 377, 391 (Colo. 2001).

> A claim for nuisance is predicated upon a substantial invasion of a plaintiff's interest in the use and enjoyment of his property when such invasion is: (1) intentional and unreasonable; (2) unintentional and otherwise actionable under the rules for negligent or reckless conduct; or (3) so abnormal or out of place in its surroundings as to fall within the principle of strict liability. Restatement (Second) Torts § 822; *Baughman v. Cosler*, []459 P.2d 294, 299 (1969). Stated differently, the elements of a claim of nuisance are an intentional, negligent, or unreasonably dangerous activity resulting in the unreasonable and substantial interference with a plaintiff's use and enjoyment of her property. [*Lowder v. Tina Marie Homes, Inc.*, 601 P.2d 657, 658 (1979)]. To maintain a successful nuisance claim, a plaintiff must establish that the defendant has unreasonably interfered with the use and enjoyment of her property. Id. The question of unreasonableness is an issue of fact and should, therefore, be left to the determination of the trier of fact. Restatement (Second) of Torts, § 826 cmt. b. In making any determination of unreasonableness, the trier of fact must weigh the gravity of the harm and the utility of the conduct causing that harm. Id. at cmt. d. Generally, to be unreasonable, an interference must be significant enough that a normal person in the community would find it offensive, annoying, or inconvenient. *Id.* at § 821F; *Lowder*, 601 P.2d at 658.

Id. The standards for nuisance are not set by federal regulation. The tort arises under Colorado law and is explicitly established by reference to local community standards and whether "a normal person <u>in the community</u> would find [the noise] offensive, annoying, or inconvenient." *Id.* (emphasis added).

Plaintiffs will establish local standards through testimony of members of the community. Plaintiffs have further asserted that provisions of the Longmont Code explicitly set forth the

standards for reasonable noise in the local residential area. The standards in the Longmont Code are consistent with 1.01.050 of the Boulder County Ordinance and with C.R.S. §25-12-103(1). Plaintiffs acknowledge that these two laws exclude airplane noise. Nonetheless, they provide further evidence of a consistent local standard for reasonable noise. The evidence will show that it is substantively undisputed that the Defendant routinely violates these local noise standards.

IV. REMEDIES

Plaintiffs seek both monetary damages and injunctive relief for Defendant's tortious conduct. It is well established that monetary damages for aircraft noise are not preempted by federal law, and the injunctive relief requested does not intrude upon the authority of the FAA.

i. Monetary Damages

Plaintiffs' claims for monetary damages are not preempted or controlled by federal law. Claims by landowners based upon airport noise have been examined in numerous jurisdictions. See *Jackson v. Metropolitan Knoxville Airport*, 922 SW 2d 860 (Tenn. 1996) (analyzing cases from Minnesota, North Carolina, Washington, Oklahoma, Oregon, California, Pennsylvania, and New Hampshire). These Courts have all upheld damage suits by landowners due to aircraft noise. *Long v. City of Charlotte*, 293 S.E.2d 101, 109 (N.C. 1982); *Martin v. Port of Seattle*, 391 P.2d 540, 545 (Wash. 1964), *cert. denied*, 379 U.S. 989, 85 S.Ct. 701, 13 L.Ed.2d 610 (1965); *Henthorn v. Oklahoma City*, 453 P.2d 1013 (Okla. 1969); *Thornburg v. Port of Portland*, 376 P.2d 100 (Or. 1962); *Aaron v. City of Los Angeles*, 40 Cal. App.3d 471, 115 Cal. Rptr. 162 (1974), *cert. denied*, 419 U.S. 1122, 95 S.Ct. 806, 42 L.Ed.2d 822 (1975); *City of Philadelphia v. Keyser*, 407 A.2d 55 (Pa. 1979); *Sundell v. Town of New London*, 409 A.2d 1315 (N.H. 1979)

In *Jackson* and in *Alevizos v. Metropolitan Airports Commission of Minneapolis and St. Paul*, 298 Minn. 471, 216 N.W.2d 651 (1974) the court specifically found that suits for

interference with landowner rights from aviation noise based are not preempted by federal law. The Minnesota Court described the land interest as follows:

> Property is more than the physical thing—it involves the group of rights inhering in a citizen's relation to the physical thing. Traditionally, that group of rights has included the rights to possess, use, and dispose of property. *See, United States v. General Motors Corp*., 323 U.S. 373, 378, 65 S.Ct. 357, 359, 89 L.Ed. 311, 318 (1945).
>
> The right to use one's property in relative freedom from irritating noise and interference can hardly be disputed in view of present day living conditions where a great deal of governmental and private effort is spent on planning and zoning our cities in an effort to improve the quality of life.
> *Id.* at 661.

Federal law itself acknowledges that property owners can recover damages for aviation noise, particularly when there is a "change in the type or frequency of aircraft operations at the airport." 49 U.S. Code § 47506(a)(1)(A). This section of the code is titled "Limitations on recovering damages for noise" and recognizes that such claims exist without providing explicit federal authority for them. Thus, the statute implicitly recognizes that liability can arise from tort claims, which are normally defined by state law. In this context it is notable that the federal code does not assert that a party must establish a violation of federal standards to recover damages for aviation noise. This is consistent with the *Jackson* line of case which all refer to state law when analyzing the burden of proof for the underlying property or tort claims.

The Colorado Supreme Court has specifically recognized that airport owners can be held liable for noise impact on property owners. *Arapahoe County Public Authority v. Centennial Express Airlines*, 956 P.2d 587, 595 (Colo. 1998). There is no legal or logical basis to suggest that the party that directly causes a nuisance (in this case, Mile Hi) would have less liability than the airport from which they operate.

ii. Injunctive relief

This Court clearly has authority to issue injunctive relief under Colorado law. C.R.C.P. 65. In order to obtain a permanent injunction, a party must show: "(1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest. *Langlois v. Board of County Commissioners*, 78 P.3d 1154, 1158 (Colo. App. 2003); *K9 Shrink, LLC v. Ridgewood Meadows Water*, 278 P. 3d 372, 378 (Colo. App. 2011). "A trial court has broad discretion to formulate the terms of injunctive relief when equity so requires." *Colorado Springs Board of Realtors, Inc. v. State*, 780 P.2d 494, 498 (Colo. 1989).

Nonetheless, Defendants contend that injunctive relief is specifically preempted by federal law. State law is not preempted by federal law unless it "actually conflicts with federal law." *English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990). Plaintiffs concede that FAA regulations are preemptive on issues of air traffic safety, regulation of "carriers" of passengers and freight, and issues which implicate interstate commerce. However, Plaintiffs are not requesting that the court constrain airport operations that are within the sole jurisdiction of the FAA. This action is against a specific tortfeasor and seeks restrictions that do not impinge on the FAA in any manner.

Colorado statutes are replete with examples of State control over activities in Colorado airspace that don't conflict with Federal interests. C.R.S. § 41-1-106 ("Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by United States law"); C.R.S. § 18-1-901(3)(k) (DUI "vehicular homicide" covers those committed by airplane); C.R.S. § 18-9-115 (prohibiting airplanes from endangering public transportation and utility transmission).

Defendant's preemption argument presents a position that any local Court should be loathe to concede. Preemption asserts that this Court is powerless to do anything for the protection of its citizens. The Colorado Supreme Court has resisted ceding local control. In *Arapahoe County Public Authority v. Centennial Express Airlines*, 956 P.2d 587 (Colo. 1998), the Colorado Supreme Court notably refused to defer to Federal authority which was of "uncertain aid" to Colorado interests. *Id*. at 592. The Court emphasized that matters of "local and regional planning" will not create conflicts with federal interests. *Id*. at 594.

The preemption analysis in this case should similarly focus on the distinction between local issues and matters that intrude upon federal concerns. Control of a specific operator's activity does not infringe on the FAA's interests in protecting open use of the airways if the operator does not carry passengers or freight, or travel to or from FAA controlled airports. The Defendant is a strictly local skydiving operation that does not even transit between airports. Control of a skydiving company has no conceivable impact on interstate commerce. In fact, none of the typical preemption concerns are present in this case.

The central case from which all findings of preemption arise is *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633 (1973). The case involved a curfew on all passenger flights from Burbank Airport. The Court discussed a variety of concerns which supported preemption. There were interstate commerce concerns. *Id.* at 638 ("President signed the bill he stated that 'many of the most significant sources of noise move in interstate commerce and can be effectively regulated only at the federal level.'"). The Defendant's local operation does not involve interstate commerce. The Burbank Court was also concerned about the practical ability of the FAA to control air space. *Id.* at 639 ("it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in

controlling air traffic flow.") That concern is not present here. The FAA does not control take offs or landings from Vance Brand. *See* **Exhibit A**, Transcript of Deposition of FAA Controller Yancy O'Barr ("O'Barr Depo.") at 8:19-9:7. Planes departing from the airport are subject to Visual Flight Rules and do not need to communicate with DIA control. **Exhibit A,** O'Barr Depo. at 12:7-17 ("VFR, they can do what ever they want…"). Furthermore, the relief requested by Plaintiffs would only serve to limit air traffic which could not possibly impede the FAA from "scheduling flights to avoid congestion and the concomitant decrease in safety." *Burbank*, 411 U.S. at 639. Under the current state of affairs, Defendant flies whenever they want and as much as they want without creating traffic or safety issues. Fewer flights cannot increase congestion or safety issues.

There is abundant reason to treat *Burbank* narrowly. The decision held a bare majority when it was decided. The dissent by Justice Rehnquist, which was joined by Justices Stewart, White and Marshall, encouraged a narrow interpretation, stating:

> The 1972 Act set up procedures by which the Administrator of EPA would have a role to play in the formulation and review of standards promulgated by FAA dealing with noise emissions of jet aircraft. But because these agencies have exclusive authority to reduce noise by promulgating regulations and implementing standards directed at one or several of the causes of the level of noise, local governmental bodies <u>are not thereby foreclosed from dealing with the noise problem by every other conceivable method</u>.

Id. at 652-53 (emphasis added)

Furthermore, in the time since *Burbank*, local control has been upheld in the federal courts. *See, Santa Monica Airport Ass'n v. City of Santa Monica*, 659 F. 2d 100, 102 (9th Cir. 1981). Specifically, local controls such as "a night curfew on takeoffs and landings," and bans on, "low aircraft approaches on weekends", "helicopter flight training," and jets outright were all upheld. *Id*.

More recently, in *City of Naples Airport Authority v. FAA*, 409 F.3d 431, 435 (D.C. Cir. 2005), the federal courts again endorsed local control of noise. The Court stated:

> The FAA promulgated non-binding guidelines regarding noise levels and land use in 1984. Those guidelines stated that levels below DNL 65 dB are generally compatible with all land use. Generally means not always. The guidelines thus acknowledged that "responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours *rests with the local authorities*," to which the FAA added that its guidelines "are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses." 49 Fed. Reg. 49,260, 49,275 (Dec. 18, 1984).

Id. (emphasis added). The Court in *Naples* acknowledged that reasonable noise levels are established by local considerations. *Id.* at 436.

In short, the choices that Mile Hi makes when conducting its skydiving operations, e.g., the trajectory to reach a drop altitude, the number and type of planes it flies *over Plaintiffs homes*, the distance it flies *above Plaintiffs homes*, the noise it generates *over Plaintiffs homes*, the hours it operates *over Plaintiffs' homes*, are choices within the discretion of Mile Hi and within the discretion of this Court to limit. In these discretionary matters, Mile Hi must operate in a reasonable manner and may not interfere with Plaintiffs' quiet enjoyment of their properties.

iii. Local controls which do not interfere with the FAA

The FAA has issued an "Advisory Circular" which provides guidance for when local controls may interfere with the FAA's ability to control issues of safety, transportation and interstate commerce. *See* **Exhibit B**.[2] The FAA explicitly allows the controls sought by Plaintiffs.

[2] The complete Advisory Circular can be found at http://www.faa.gov/documentLibrary/media/advisory_circular/150-5020-1/150_5020_1.pdf.

The Circular states that "No two airport situations are alike, and each will likely require a unique combination of mitigation measures to achieve an acceptable solution" to noise concerns." *Id.* at p.3 (§1.3.e). The FAA further acknowledges that, in reviewing restrictions, "local needs and benefits are weighed and balanced against the needs and concerns of the rest of the nation." Thus, local control only intrudes upon FAA jurisdiction when "the needs of the nation" are implicated, which is not the case here.

In Chapter 3, Section 2, the publication offers a matrix of actions an airport proprietor can take to mitigate noise. Recommended restriction #10 in the matrix is "limitations on Number or Type of Operations or Types of Aircraft." This is precisely the type of control requested via injunction by Plaintiffs.

Plaintiffs acknowledge that the FAA has ceded authority to airport proprietors, and not explicitly to local authorities such as this Court. Regardless, this Court does not derive its authority from federal largesse. This Court is empowered by the sovereignty of the State of Colorado and an analysis of this authority does not turn on whether the federal government chooses to acknowledge it. The authority of the state is not limited unless the state action causes an "actual conflict" with federal law. Thus, the acknowledgment that a proprietor can control the number or type of operations, or the type of aircraft allowed at a local airport, is also an admission that state action of the same sort cannot be said to conflict with FAA control.

iv. Vance Brand Noise Abatement Procedures

This Court has already found that "local governments … may require aircrafts to use certain noise abatement techniques such as utilizing certain equipment or reducing speeds to decrease noise levels." *See* Order dated December 31, 2014. Indeed, such action does not infringe upon federal authority in any manner. Accordingly, Plaintiffs have requested that the

Court prohibit the Defendant from flying aircraft which are not equipped with the four bladed propeller set ups known as "quiet kits."

However, an order directing Mile Hi to fly in compliance with noise abatement rules is not the Plaintiffs' preferred remedy due to a practical problem of enforcement. The Court may note that in the Trial Management Order Plaintiffs' requested that the Court issue injunctive relief which may be "practically enforced." This is intended to include a directive to fly in compliance with noise abatement rules if the Court deems such relief to be enforceable.

The FAA explicitly authorizes local airports to establish noise abatement procedures. *See* **Exhibit B**, § 322 (Noise Abatement Takeoff or Approach Procedures) ("A basic noise mitigation strategy is the use of noise abatement takeoff and landing procedures."); 14 C.F.R. Part 150, NCP Checklist, § IV(A)(4) ("Voluntary Flight Procedures") (**Exhibit C**). The Vance Brand Airport has issued noise abatement procedures that include reducing power after takeoff and avoiding flying and circling over residential areas. Longmont General Aviation Noise Abatement Procedures (**Exhibit D**), at p. 2. The procedures state that they "should be utilized to the fullest extent possible, unless prevented by: Required distance from cloud criteria or other weather condition; Operating parameters of the aircraft involved; Traffic conditions or other safety factors; or ATC Instructions." *Id*. at p. 1

The rules are "voluntary" in recognition of the fact that pilots routinely have to weigh multiple factors in making safe flight decisions. Thus, the system requires good faith efforts on the parts of pilots to follow such rules. Testimony will show that the Defendant does not believe that it is necessary to even make a good faith effort to follow noise abatement procedures, and that no penalties may be imposed on an operator that deliberately and completely disregards noise abatement procedures.

The Defendant's disregard of noise abatement procedures is unreasonable and negligent. However, monitoring their compliance with such procedures in the face of a myriad of potential safety excuses that can be manufactured for deviation indicates that ordering the tortfeasor to cease the negligence may not be a practical remedy for the negligence. Plaintiffs contend that more direct and readily enforceable forms of relief would be more appropriate. Specifically, Plaintiffs have requested limits on the number of planes Mile Hi has in operation simultaneously and the hours of operation, particularly on weekends.

v. Noise standards

As a final matter, Plaintiffs contend that noise impact cannot be properly assessed by reference to a yearly average of the noise output caused by the Defendant. The skydiving operations of the Defendant are overwhelmingly concentrated to a five month period (75% of flights) and within that period, overwhelmingly concentrated on weekends. As a result, the "average" number of daily flights across a year is a meaningless figure which fundamentally distorts the noise impact. Instead of the actual weekend flight load which exceeds fifty flights a day, the Defendant seeks to use measure noise based on an "average" of four flights per day.

While the FAA uses the yearly day night average to assess "complex" airports for the purpose of authorizing noise mitigation grants, the agency acknowledges that local considerations dominate in any noise impact assessment. The Advisory Circular states:

> 235. NOISE COMPATIBILITY PREDICTION. Different uses of the land have different sensitivities to noise. Individuals may each have different perceptions of what is an acceptable or an intruding level of noise. The background or residual noise against which a specific noise is perceived varies both by location and by time of day. Even the specific situation of the receiver, such as outdoor, indoor with windows open or closed, as well as one's activity of the moment affect the perception of a noise as intruding or not intruding. Regardless of the human activity, however, the associated noise sensitivity must be translated into a land use category for planning and regulatory purposes. The ASNA Act requires the FAA to identify land uses that are "normally compatible" or "noncompatible"

> with various levels of noise exposure by individuals. This was done in Part 150 and is used in developing and reviewing airport noise exposure maps and airport noise compatibility programs. *It is important to recognize, however, that land use guidelines (even those adopted by regulation) are a planning tool* and as such provide general indications as to whether particular land uses are appropriate for certain measured or calculated noise exposure levels.

See **Exhibit B** at p. 20 (emphasis added). The FAA "planning tool" should not be mistaken for a local standard for nuisance or negligence. The Court should, therefore, consider all useful metrics in assessing the actual local impact of Defendant's activities.

WHEREFORE, Plaintiffs hereby respectfully request that this Court issue a judgment in Plaintiffs' favor and assess damages and injunctive relief as described above and in the Trial Management Order.

Respectfully submitted this 31st day of March, 2015.

LAW OFFICES OF MATTHEW B. OSOFSKY, ESQ.

Original Signature on file at
Law Offices of Randall M. Weiner, P.C.

By: */s/ Matthew Osofsky*
Matthew Osofsky, #34075

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing **TRIAL BRIEF** was E-Served by the Court-authorized E-System provider to all active counsel of record on ICCES' service list on this 31st day of March, 2015.

/s/ Matthew Osofsky
Matthew Osofsky

In accordance with C.R.C.P. 121 §1-26(9), a printed copy of this document with original signature(s) is maintained by Law Offices of Randall M. Weiner, P.C., and will be made available for inspection by other parties or the Court upon request.