

AIR AND SURFACE TRANSPORTATION, ENERGY AND THE ENVIRONMENT

Buchalter Wins National Victory
By Barbara Lichman on July 13, 2021

On Thursday, July 8, 2021, the City of Culver City and its co-Petitioner, City of Los Angeles, prevailed in the case of City of Los Angeles, et al. v. Stephen Dickson, et al. against the Federal Aviation Administration (“FAA”) on substantially all claims, an almost unprecedented outcome for local governments against a federal agency acting within its area of expertise. In that case, Petitioners challenged FAA’s failure to perform any environmental review, as required by the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. (“NEPA”) before implementing changes in aircraft flight tracks that lowered altitudes and consolidated flight tracks over residential areas not previously overflowed, resulting in continuing and vociferous community opposition. That challenge was brought in the U.S. Court of Appeals for the Ninth Circuit under its original jurisdiction, 49 U.S.C. § 46110, in the adjudication of challenges to FAA actions.

Because these operational changes were part of a larger national program of airspace changes called FAA’s NextGen project, aimed at reducing distances aircraft must fly on arrival to airports, Petitioners’ victory has implications for communities throughout the nation over which FAA has persisted in implementing flight track changes under the guise of the NextGen Project, in each and every case without the benefit of required environmental review.

Thus, the Ninth Circuit’s decision in the above case will have benefits not merely for the litigants, but for communities throughout the United States impacted by FAA’s free-wheeling approach to implementation of Next Gen airspace changes. Specifically, as a result of that holding, FAA will have to analyze and disclose potential impacts such as those on noise and air quality, for a proposed operational change, rather than following its current pattern of simply dismissing such changes as “exempt” from environmental review.

In short, the decision in City of Los Angeles v. Stephen Dickson has far-reaching impacts that have not yet begun to be felt. In the short-run, it will assist Petitioners in protecting their citizens from unexpected and potentially

impactful environmental intrusions on their daily lives. In the long run, it will influence not only FAA, but also other government agencies, to meet their environmental responsibilities under the law.

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