

IN RE: PETITION FOR SPECIAL HEARING
SW/S Baltimore National Pike,
1350' NW Nuwood Avenue
1st Election District
1st Councilmanic District
(6631 & 6635 Baltimore National Pike)

H-K Real Estate Holdings, Inc.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 01-368-SPH
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, H-K Real Estate Holdings, Inc., by and through Richard Rubin, their attorney at law. The Petitioners are requesting a special hearing to approve the use of a helistop which will be limited to not more than 15 helicopter operations per month. The special hearing request involves property located at 6631 and 6635 Baltimore National Pike in the Catonsville area of Baltimore County.

Appearing at the hearing on behalf of the special hearing request were Joseph Larson, a representative of Spellman, Larson & Associates, the engineers who prepared the site plan of the property, Stanford Hess, Steve Sheik, Gerald Henning and Roy Taylor. The Petitioners were represented by Richard Rubin and Hugh Bernstein, attorneys at law. Appearing in opposition to the Petitioners' request were Don Burke, a representative of Russell Toyota, who was represented by Aaron Margolis, attorney at law.

Testimony and evidence indicated that the property, which is the subject of this special hearing request, consists of 16.284 acres, more or less, the majority of which is zoned BR with smaller portions of DR 5.5 and DR 2. The subject property is located on the south side of Baltimore National Pike, just east of the Patapsco State Park. The property is improved with an

RECEIVED FOR FILING
Date 6/8/01
By J. P. Jensen

Antwerpen Automobile Dealership, the improvements of which are more particularly shown on Petitioners' Exhibit No. 7A, the site plan of the property.

The Petitioners are requesting a special hearing to approve a helistop on the subject property. Mr. Stanford Hess, an officer of the Antwerpen Automobile Dealership, appeared and testified regarding this particular request. Mr. Hess testified that the helicopter in question, a Bell 407, was leased by an entity known as Ant Air, Inc. The helicopter is currently leased from Capitol Helicopters located in Washington, D.C. The Antwerpen Dealerships in the Baltimore area utilize the subject helicopter for the purpose of attending auctions in Pennsylvania and West Virginia and for business meetings in New York and New Jersey. The owner of the Antwerpen Automobile Dealerships has chosen this particular property to establish this heliport, which is intended to be used by all of the managers and general managers of the various Antwerpen entities.

Mr. Hess further testified that the subject property is used approximately 5-7 times per month as a helistop. Mr. Hess stated that the passengers intending to utilize the helicopter are usually assembled 10-15 minutes ahead of the time when the helicopter actually lands on the property. Once the helicopter lands on the property, those passengers board the helicopter and travel to their destination. Mr. Hess stated that the time which the helicopter is actually on the property is very limited, only staying the necessary time to load or unload passengers.

Mr. Hess also testified concerning the affects of the helicopter coming and going to the property on their existing automobile sales business located on the property. Mr. Hess testified that the disturbance to their sales of automobiles on the property during such times as the helicopter is landing or taking off is minimal. He stated that the length of the disturbance is very short and that business can be conducted as usual within their sales building. He did state,

however that if a salesman is on the parking lot with a customer, the sale occurring at that time would have to wait until such time as the helicopter landed or took off.

Mr. Joe Larson, a representative of Spellman, Larson & Associates, the firm who prepared the site plan, testified that the Petitioners have proposed a 9 ft. high steel reinforced raised platform upon which the helicopter will land. The raised platform, as well as the requisite clear zone, are depicted on the site plan submitted into evidence. Mr. Larson further testified the subject helistop meets all County regulations, County Zoning regulations and all of the requirements of the Policy Manual relating to helistops. He further stated that a helistop is a matter permitted as of right in this DR Zone.

Mr. Steve Sheik, co-owner of Capitol Helicopters and a helicopter pilot himself, testified at the hearing. Mr. Sheik testified that he has piloted many flights to and from this particular location. He testified that the primary flight path parallels Route 40 and does not fly over any residential property during the approach to the helistop or take off from the helistop. Mr. Sheik further testified that the secondary flight path to and from the property causes the helicopter to fly over the Patapsco State Park, again avoiding any residential properties.

Also testifying on behalf of the special hearing request was Mr. Roy Taylor, a retired Baltimore County police officer. Mr. Taylor served for 26 years as the chief pilot for the Baltimore County Police Department and actually started the air program for the Baltimore County Police Department. At the present time, he is employed by CBS and flies a news helicopter for WJZ TV. During his service with the Police Department for Baltimore County, he was the Director of Public Safety and was in charge of approving helistops in Baltimore County. Mr. Taylor testified that he visited the site and reviewed the flight plan for the property and has reached a conclusion that the use of the property as a helistop is safe and appropriate.

As stated previously, Mr. Don Burke, the General Sales Manager for Russell Toyota, appeared in opposition to the Petitioners' request. Mr. Burke testified that he has been employed with Russell Toyota for the past 7 years. His place of business is located directly across Baltimore National Pike from the subject property. Mr. Burke testified that the helicopter operations are very disturbing and disruptive to their business during the times that the helicopter lands and takes off from the property. Mr. Burke testified that the windows in his business vibrate and shake during such events and the salesmen are unable to conduct business, both inside the sales facility and outside on the parking lot. In addition, Mr. Burke testified that the helicopter has traveled directly over their sales facility when landing at the Antwerpen Dealership. He testified that the helicopter itself is disruptive to motorists who are traveling on Baltimore National Pike, in that they slow down and attempt to look at the helicopter as it approaches the property. Because of the disruption to his business, Mr. Burke has requested that the special hearing be denied and the helicopter cease landing on the Antwerpen site.

The Baltimore County Council has determined that the landing and taking off of a helicopter from property zoned BR shall be permitted as a matter of right. In essence, the County Council has taken into account the noise that helicopters traditionally make when landing and taking off from any property when deciding to allow helistops in the BR zone. There is no doubt that helicopters make a very unique noise when coming and going to any property. In addition, no doubt the operation of a helicopter in close proximity to the ground does, in fact, draw attention from motorists and people. However, this was well known to the County Council when they determined to approve such use of property zoned BR.

Helicopter operations are becoming more and more common place. Not only do law enforcement agencies, such as local and state police departments, utilize helicopters both in

6/8/01

R. Spence

crime prevention and medical emergency situations, but so do the local television news stations employ helicopters in their businesses. Therefore, it is becoming more and more common to see these helicopters in and around the Baltimore metropolitan area, particularly in the area which is the subject of this special hearing request.

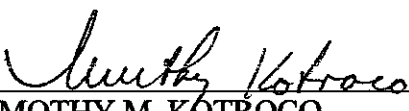
After considering the testimony and evidence offered both for and against the Petitioners' request for a helistop, I find that the requested special hearing should be granted. It is clear that the testimony and evidence indicated that a helistop operation can occur on the subject property in a safe fashion and can be operated without detriment to surrounding properties and neighbors.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 8th day of June, 2001, that the Petitioners' Request for Special Hearing from Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a helistop on the subject property, be and is hereby APPROVED, subject to the following conditions and restrictions:

1. All helicopter operations associated with this property shall utilize the flight paths as described at the zoning hearing; that being either parallel to Route 40 or as a secondary flight path, over the Patapsco State Park. In no event shall any helicopter utilizing this helistop fly over any residential property or the Russell Toyota property while approaching or leaving the site.
2. Only helicopters associated with or hired by the Antwerpen Automobile Dealership, being used for Antwerpen business, shall be permitted to utilize this helistop. No other helicopters shall be permitted to use this site.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty

(30) days of the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
DMS
6/8/01
BY: [Signature]



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

June 8, 2001

Richard Rubin, Esquire
Hugh Bernstein, Esquire
Neuberger, Quinn, Gielen,
Rubin & Gibber, P.A.
1 South Street, 27th Floor
Baltimore, Maryland 21201

Re: Petition for Special Hearing
Case No. 01-368-SPH
Property: 6631 & 6635 Baltimore National Pike

Dear Messrs. Rubin & Bernstein:

Enclosed please find the decision rendered in the above-captioned case. The petition for special hearing has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy M. Kotroco".

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure



Copies to:

**Mr. Joseph Larson
Spellman, Larson & Associates
105 W. Chesapeake Avenue
Towson, MD 21204**

**Mr. Roy Taylor
11504 Jerome Avenue
White Marsh, MD 21162**

**Aaron Margolis, Esquire
405 E. Joppa Road
Towson, MD 21286**

**Mr. Don Burke
6700 Baltimore National Pike
Baltimore, MD 21228**

**Mr. Greg Morgan
5 Nayborly Court
Baltimore, MD 21228**

**Mr. Gary Doucett
3 Oak Shadows Court
Baltimore, MD 21228**



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 6631 & 6635 Baltimore National Pike
which is presently zoned BR, DR-2, DR5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

the use of a helistop which will be limited to not more than
15 stops per month.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Does Not Apply

Telephone No.

City State Zip Code

Attorney For Petitioner:

Richard Rubin

Name - Type or Print

Signature

Neuberger, Quinn, Gielen, Rubin & Gibber, P.A.

Company

1 South St., 27th Floor 410-332-8509

Address Telephone No.

Baltimore MD 21202

City State Zip Code

Legal Owner(s):

H-K Real Estate Holdings Inc.

Name - Type or Print

Signature

Jack Antwerpen, Pres.

Name - Type or Print

Signature

6631 Baltimore National Pike 410-747-3333

Address

Telephone No.

Baltimore MD 21207

City State Zip Code

Representative to be Contacted:

Richard Rubin

Name

1 South St., 27th Floor 410-332-8509

Address

Telephone No.

Baltimore, MD 21202

City State Zip Code

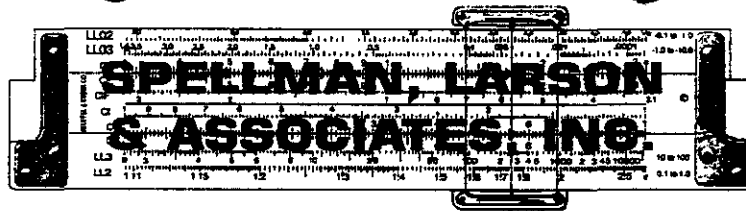
OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING All Day

UNAVAILABLE FOR HEARING

Reviewed By [Signature]

Date 3-20-01



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS

105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

DESCRIPTION OF
6635 BALTIMORE NATIONAL PIKE,
FIRST DISTRICT,
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the southwest side of Baltimore National Pike (State Route Number 40), 150 feet wide at the distance of 1,980 feet, more or less, measured northwesterly along the southwest side of Baltimore National Pike from Nuwood Drive and running thence and referring the courses of this description to the Baltimore County Grid Meridian south 18 degrees 25 minutes 35 seconds west 696.13 feet to the centerline of a Road 30 foot wide thence running and binding on the centerline of said Road north 88 degrees 24 minutes 59 seconds west 434.17 feet, running thence north 18 degrees 47 minutes 29 seconds east 556.28 feet north 61 degrees 14 minutes 30 seconds west 139.88 feet and north 19 degrees 16 minutes 29 seconds east 460.16 feet to intersect the aforesaid southwest side of Baltimore National Pike thence running and binding thereon south 48 degrees 15 minutes 59 seconds east 135.10 feet and southeasterly by a curve to the left with a radius of 7,714.44 feet the distance of 450.52 feet (the chord of the arc bears south 49 degrees 56 minutes 22 seconds east 450.46 feet) to the place of beginning.

Containing 9.319 acres of land more or less.

03/23/01



368



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS

105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

DESCRIPTION OF
6631 BALTIMORE NATIONAL PIKE,
FIRST DISTRICT,
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the southwest side of Baltimore National Pike (State Route No. 40) 150 feet wide, at the distance of 1350 feet, more or less, measured northwesterly along the southwest side of Baltimore National Pike from Nuwood Drive, and running thence and referring the courses of this description to the Baltimore County Grid Meridian south 18 degrees 25 minutes 35 seconds west 323.73 feet to the centerline of a Road 30 feet wide thence running and binding on the centerline of said Road north 88 degrees 24 minutes 59 seconds west 627.20 feet running thence north 18 degrees 25 minutes 35 seconds east 696.13 feet to intersect the aforesaid southwest side of Baltimore National Pike thence running and binding thereon southeasterly by a curve to the left with a radius of 7714.44 feet the distance of 630.03 feet (the chord of the arc bears south 53 degrees 57 minutes 07 seconds east 629.95 feet) to the place of beginning.

Containing 6.965 acres of land more or less.

03/23/01



368

93038
No. 21-368 SPH

AMOUNT \$ 250.00

FOR: Mr. J. Edgar Hoover, Director, FBI

CASHIER'S VALIDATION

DATE	DESCRIPTION	AMOUNT	BALANCE
12/10/2021	DEPOSIT	100.00	100.00
12/15/2021	PAYROLL	50.00	50.00
12/20/2021	RENT	25.00	25.00
12/25/2021	UTILITIES	15.00	10.00
12/30/2021	SALES	75.00	85.00
01/05/2022	PAYROLL	50.00	35.00
01/10/2022	RENT	25.00	10.00
01/15/2022	UTILITIES	15.00	(5.00)
01/20/2022	SALES	60.00	55.00
01/25/2022	PAYROLL	50.00	5.00
01/30/2022	RENT	25.00	(20.00)
02/05/2022	UTILITIES	15.00	(35.00)
02/10/2022	SALES	80.00	45.00
02/15/2022	PAYROLL	50.00	(5.00)
02/20/2022	RENT	25.00	(30.00)
02/25/2022	UTILITIES	15.00	(45.00)
02/28/2022	SALES	70.00	(15.00)
03/05/2022	PAYROLL	50.00	(65.00)
03/10/2022	RENT	25.00	(90.00)
03/15/2022	UTILITIES	15.00	(105.00)
03/20/2022	SALES	90.00	(15.00)
03/25/2022	PAYROLL	50.00	(65.00)
03/30/2022	RENT	25.00	(90.00)
04/05/2022	UTILITIES	15.00	(105.00)
04/10/2022	SALES	85.00	(20.00)
04/15/2022	PAYROLL	50.00	(70.00)
04/20/2022	RENT	25.00	(95.00)
04/25/2022	UTILITIES	15.00	(110.00)
04/30/2022	SALES	75.00	(35.00)
05/05/2022	PAYROLL	50.00	(85.00)
05/10/2022	RENT	25.00	(110.00)
05/15/2022	UTILITIES	15.00	(125.00)
05/20/2022	SALES	95.00	(30.00)
05/25/2022	PAYROLL	50.00	(80.00)
05/30/2022	RENT	25.00	(105.00)
06/05/2022	UTILITIES	15.00	(120.00)
06/10/2022	SALES	80.00	(40.00)
06/15/2022	PAYROLL	50.00	(90.00)
06/20/2022	RENT	25.00	(115.00)
06/25/2022	UTILITIES	15.00	(130.00)
06/30/2022	SALES	70.00	(60.00)
07/05/2022	PAYROLL	50.00	(110.00)
07/10/2022	RENT	25.00	(135.00)
07/15/2022	UTILITIES	15.00	(150.00)
07/20/2022	SALES	90.00	(60.00)
07/25/2022	PAYROLL	50.00	(110.00)
07/30/2022	RENT	25.00	(135.00)
08/05/2022	UTILITIES	15.00	(150.00)
08/10/2022	SALES	85.00	(65.00)
08/15/2022	PAYROLL	50.00	(115.00)
08/20/2022	RENT	25.00	(140.00)
08/25/2022	UTILITIES	15.00	(155.00)
08/30/2022	SALES	75.00	(80.00)
09/05/2022	PAYROLL	50.00	(130.00)
09/10/2022	RENT	25.00	(155.00)
09/15/2022	UTILITIES	15.00	(170.00)
09/20/2022	SALES	95.00	(75.00)
09/25/2022	PAYROLL	50.00	(125.00)
09/30/2022	RENT	25.00	(150.00)
10/05/2022	UTILITIES	15.00	(165.00)
10/10/2022	SALES	80.00	(85.00)
10/15/2022	PAYROLL	50.00	(135.00)
10/20/2022	RENT	25.00	(160.00)
10/25/2022	UTILITIES	15.00	(175.00)
10/30/2022	SALES	70.00	(105.00)
11/05/2022	PAYROLL	50.00	(155.00)
11/10/2022	RENT	25.00	(180.00)
11/15/2022	UTILITIES	15.00	(195.00)
11/20/2022	SALES	90.00	(105.00)
11/25/2022	PAYROLL	50.00	(155.00)
11/30/2022	RENT	25.00	(180.00)
12/05/2022	UTILITIES	15.00	(195.00)
12/10/2022	SALES	85.00	(110.00)
12/15/2022	PAYROLL	50.00	(160.00)
12/20/2022	RENT	25.00	(185.00)
12/25/2022	UTILITIES	15	

**NOTICE OF ZONING
HEARING**

The Zoning Commissioner of Baltimore County and Regulations of Baltimore County will hold a public hearing on the property Maryland on the property identified herein as follows:

Case #01-388-BPH
6631 & 6635 Baltimore
National Pike
SWS Baltimore National Pike
1350 NW Nutwood Avenue
1st Election District
1st Councilmanic District
Legal Owner(s) H-K Real
Estate Holdings, Inc.
Special Hearing: to ad-
prove the use of a heliport
which will be limited to not
more than 15 stops per
month.
Hearing: Monday, May 7,
2001 at 9:00 a.m. in Room
407, County Courts Building,
Rm. 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible for
special accommodations.
Please Contact the Zoning
Commissioner's Office at
(410) 887-4386.

(2) For information con-
cerning the File and/or
Hearing, Contact the Zoning
Review Office at (410) 887-
3391.
4/20/01 Apr. 19 C463391

CERTIFICATE OF PUBLICATION

4/19/, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 4/19/, 2001.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE Case No 01-368-SPA

Petitioner/Developer ANTWERPEN, ETAL

Date of Hearing/Closing 5/7/01

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

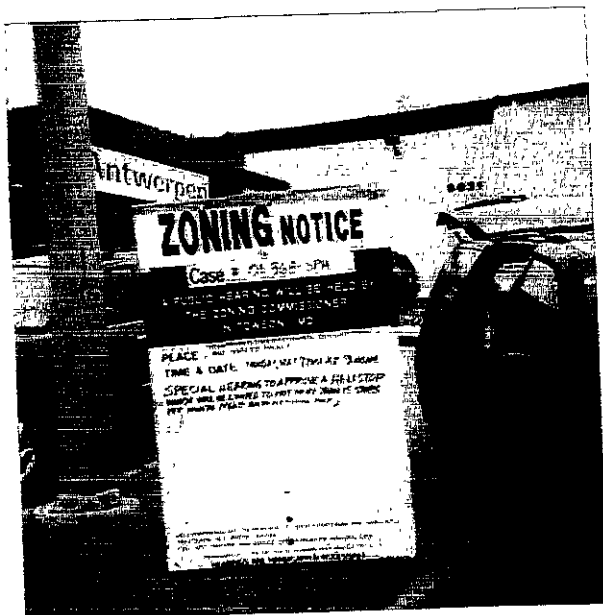
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at #6631 & 35 BALTIMORE
NATIONAL PIKE

The sign(s) were posted on

4/9/01

(Month, Day, Year)



Sincerely,

Patrick M. O'Keefe 4/9/01

(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE

(Printed Name)

523 PENNY LANE

(Address)

HUNT VALLEY, MD. 21030

(City, State, Zip Code)

410-666-5366 ; CELL 410-905-8571

(Telephone Number)

ZONING NOTICE

CASE # 01-368-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

ROOM 407, COUNTY COURTS

PLACE: BLDG. 401 BOSLEY AVENUE

MONDAY

DATE AND TIME: MAY 7, 2001 AT 9:00 A.M.

REQUEST: SPECIAL HEARING TO

APPROVE THE USE OF A HELISTOP

WHICH WILL BE LIMITED TO NOT MORE

THAN 15 STOPS PER MONTH

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED - ACCESSIBLE

Antwerp



HYUNDAI

ZONING NOTICE

CASE # 01-368-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

ROOM 407, COUNTY COURTS

PLACE: BLDG. 401 BOSLEY AVENUE

MONDAY

DATE AND TIME: MAY 7, 2001 AT 9:00 A.M.

REQUEST: SPECIAL HEARING TO

CERTIFICATE OF POSTING

RE: Case No.: 01-368-SPH

Petitioner/Developer: _____

H-K REAL ESTATE HOLDINGS INC.

Date of Hearing/Closing: 5-7-01

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____

6631 & 6635 BALTIMORE NATIONAL PIKE

The sign(s) were posted on APRIL 20, 2001
(Month, Day, Year)

Sincerely,

Garland E. Moore

(Signature of Sign Poster and Date)

GARLAND E. MOORE

(Printed Name)

3225 RYERSON CIRCLE

(Address)

BALTIMORE, MD. 21227

(City, State, Zip Code)

(410) 242-4263

(Telephone Number)

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 01-368-SPH

Petitioner: H-K Real Estate Holdings, Inc

Address or Location: 6631-35 Baltimore National Pike

PLEASE FORWARD ADVERTISING BILL TO:

Name: Richard Rubin, Esq.

Address: Neuberger, Quinn, Gielen, Ruben & Gibber, PA
1 South St., 27th Fl., Balto., Md., 21202

Telephone Number: (410) 332-8509

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 19, 2001 Issue – Jeffersonian

Please forward billing to:

Richard Rubin, Esquire
Neuberger Quinn Gielen Ruben & Gibber PA
1 South Street 27th Floor
Baltimore MD 21202

410 332-8509

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 01-368-SPH
6631 & 6635 Baltimore National Pike
SW/S Baltimore National Pike, 1350' NW Nuwood Avenue
1st Election District – 1st Councilmanic District
Legal Owner: H-K Real Estate Holdings Inc

Special Hearing to approve the use of a helistop which will be limited to not more than 15 stops per month.

HEARING: Monday, May 7, 2001 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue


Lawrence E. Schmidt
GDZ

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

April 3, 2001

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 01-368-SPH
6631 & 6635 Baltimore National Pike
SW/S Baltimore National Pike, 1350' NW Nuwood Avenue
1st Election District – 1st Councilmanic District
Legal Owner: H-K Real Estate Holdings Inc

Special Hearing to approve the use of a helistop which will be limited to not more than 15 stops per month.

HEARING: Monday, May 7, 2001 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

Arnold Jablon
Director

Catonsville Times

C: Richard Rubin, Neuberger Quinn Gielen Rubin & Gibber PA,
1 South Street, 27th Floor, Baltimore 21202
Jack Antwerpen President, H-K Real Estate Holdings Inc
6631 Baltimore National Pike, Baltimore 21207

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, APRIL 21, 2001.**
(2) **HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.**
(3) **FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.**

Client → Stanford Hess 747-3323



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

April 3, 2001

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 01-368-SPH
6631 & 6635 Baltimore National Pike
SW/S Baltimore National Pike, 1350' NW Nuwood Avenue
1st Election District – 1st Councilmanic District
Legal Owner: H-K Real Estate Holdings Inc

Special Hearing to approve the use of a helistop which will be limited to not more than 15 stops per month.

HEARING: Monday, May 7, 2001 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon". Below the signature is the handwritten number "672".

Arnold Jablon
Director

C: Richard Rubin, Neuberger Quinn Gielen Rubin & Gibber PA,
1 South Street, 27th Floor, Baltimore 21202
Jack Antwerpen President, H-K Real Estate Holdings Inc
6631 Baltimore National Pike, Baltimore 21207

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, APRIL 21, 2001.**
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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

May 4, 2001

Jack Antwerpen, President
H-K Real Estate Holdings Inc.
6631 Baltimore National Pike
Baltimore MD 21207

Dear Mr. Antwerpen:

RE: Case Number: 01-368-SPH, 6631 & 6635 Baltimore National Pike.

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 20, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Richard Rubin, Neuberger Quinn Gielen Rubin & Gibber Pa, 1 South Street,
27th Floor, Baltimore 21202
People's Counsel



Jim
5/7

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: April 6, 2001

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 6631 & 6635 Baltimore National Pike

INFORMATION:

Item Number: 01-368

Petitioner: H-K Real Estate Holdings, Inc.

Zoning: BR, DR 2, & DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning reviewed the request and offers the following comments:

1. The petitioner should demonstrate compliance with the helipad construction and safety standards specified in Section 420.1 of the Zoning Commissioner's Policy Manual (attached).
2. The Zoning Commissioner's Policy Manual states in Section 420.1(c) that every helipad shall have two approach/departure paths. The petitioner's plat shows two arrival-departure paths, however, a note on the plat indicates that one of the arrival/departure path is not to be used. Therefore, it appears that the proposed helistop is not in compliance with Section 420.1(c).
3. Notwithstanding the requirements of Section 420.1 of the Zoning Commissioner's Policy Manual, this office has determined that the use of a helistop should not be approved unless the petitioner demonstrates to the satisfaction of the Zoning Commissioner that the helistop will not seriously affect nearby residential areas with respect to noise levels.
4. If the use of a helistop is approved, consideration should be given to requiring that the "clear zone" be surrounded by a fence at least six feet in height, with suitable gates to effectively control access to said helistop.

5. If the helistop use is approved, the operator of the helistop should be required to maintain a log of helicopter operations, which should be available for inspection by the Department of Permits and Development Management upon request.

Prepared by:

Mark A. Cunningham

Section Chief:

AFK:MAC:

Jeffrey W. Long

ZONING COMMISSIONER'S POLICY MANUAL

SECTION 420.1 HELIPAD CONSTRUCTION AND SAFETY STANDARDS

Each and every location used for helicopter landings in Baltimore County shall meet the following standards: For this purpose a "helipad" shall be a helicopter landing site. These do not govern landings by helicopters in an emergency situation, nor those used by a police or fire department.

- (a) No person may land or take off from any location in Baltimore County without a "helipad permit."
- (b) Every site chosen for use as a helipad shall be located:
 1. in an area that is level and absolutely clear of any objects for a distance of 150 feet by 150 feet;
 2. and centered in the middle of the "clear zone" (Figure 1);
 3. and the "clear zone" shall be free of any loose objects or debris or any other loose material such as dirt, sand, gravel, etc.
- (c) Every helipad shall have two approach/departure paths. The approach/departure paths shall have a minimum of 90 degrees between them (Figure 2). Approach/departure paths shall be chosen on a safety basis; i.e., consideration for populated areas, public location, etc.
- (d) The approach/departure paths shall have a slope free of obstructions at a ratio of 8 to 1 from the edge of the 150 foot "clear area" to extend outward in a direct line of 4000 feet (Figure 3).
- (e) The approach/departure paths shall extend from the "clear zone" for a distance of 4000 feet and shall be 500 feet wide at the 4000 foot mark (Figure 3).
- (f) The helipad shall be constructed of "portland" cement at a 6 inch minimum thickness. A design analysis shall be required when an asphalt or bituminous concrete pavement is proposed. The dimensions of the pad shall be a minimum of 20 feet wide by 20 feet long.

FIGURE #1 Clear Zone

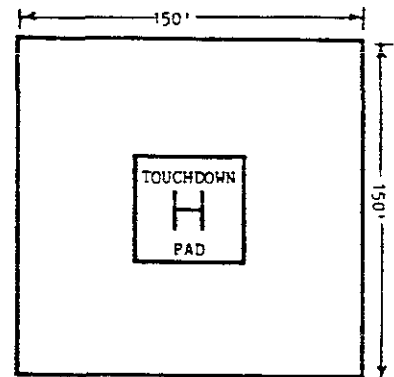


FIGURE #2 Approach - Departure Path Angles

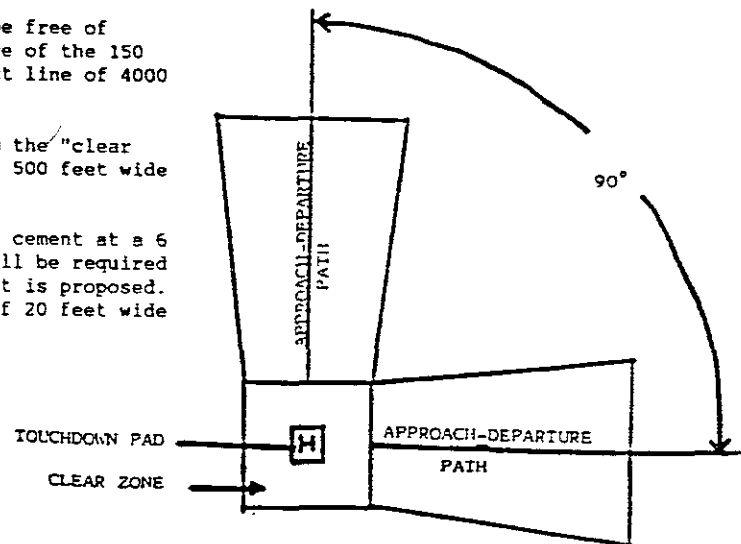
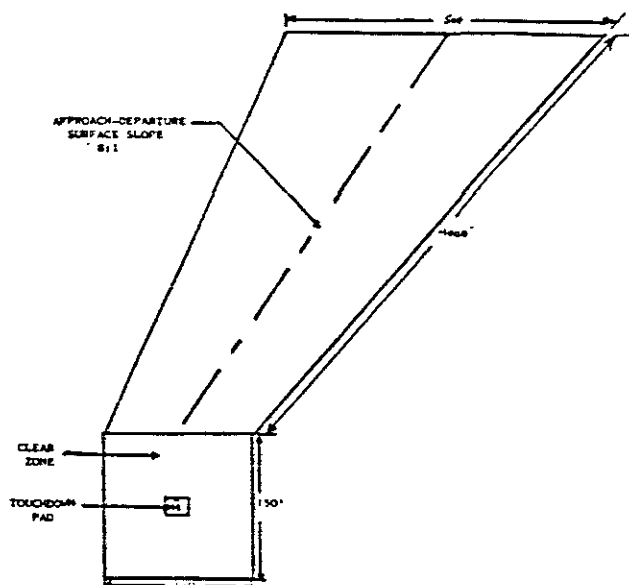
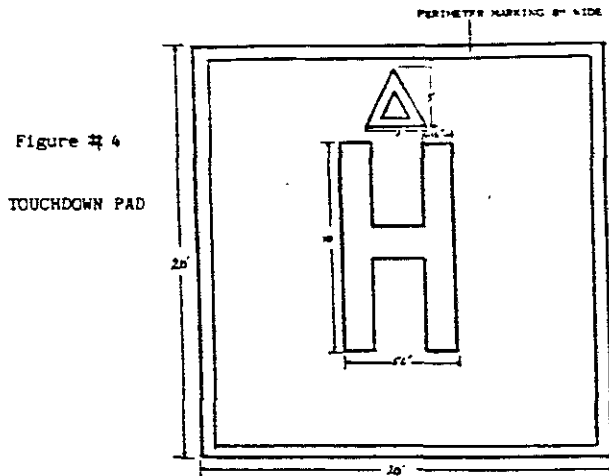


Figure #3
APPROACH-DEPARTURE PATHS



APPROVED MAY 13 1992

- (g) The surface of the helipad shall be brushed or anti-skid.
- (h) A white letter "H" shall be centered on the helipad and be a minimum of 10 feet high and 5 feet, 6 inches wide. The segments of the letter "H" shall be 15 inches wide. A red letter "H" is recommended for hospital helipads (Figure 4).



- (i) Situated above the letter "H" shall be a white triangle or arrow that has the apex pointing magnetic North. The arrow or triangle shall be 3 feet high and 3 feet wide at its base. The triangle or arrow can be segmented (Figure 4).
- (j) The perimeter of the helipad shall be marked with a solid white line 8 inches in width (Figure 4).
- (k) The perimeter of the helipad shall be illuminated by yellow lighting and the touchdown area shall be illuminated by blue lighting, if touchdown lights are installed. The lighting shall be a minimum FAA Standard.
- (l) In the proximity of the helipad shall be located a wind direction indication device. The wind indication device shall be lighted when visibility is diminished due to darkness or weather conditions.
- (m) During landing and departures no person, unless directly involved in flight operations, shall be located on the touchdown pad or within the 150 foot square "clear zone." No vehicles or objects shall be located on the touchdown pad or within the 150 foot square "clear zone" during departures and landings.
- (n) Every person filing a request to build a helipad in Baltimore County shall submit prior to construction a detailed plan showing the location of the helipad, "clear zone," and the approach and departure paths. Included in the plan shall be the location of any occupied structure within the approach/departure paths.
- (o) No permit shall be issued for construction and/or establishment of a helipad prior to a hearing before the Zoning Commissioner for a Special Hearing or a Special Exception, whichever is required. Before permission is granted, at such hearing, every helipad with the FAA would find no objection must also comply with the above requirements. Any such permit when granted shall be issued for one year, subject to annual review by the Zoning Commissioner. The policy department shall have the power to inspect every helipad for compliance with these regulations at any time, and subsequent to any inspection shall file a copy of its findings with the Zoning Commissioner, who will then determine whether further hearings are required.

APPROVED MAY 13 1991



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

March 29, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: David Thompson - 364, Jacob Antwerpen - 367,
H-K Real Estate Holdings, Inc. - 368, Paul A. Coberly - 369,
Paul A. Corberly - 370, Patrick Rooney - 371, and McMahon
Investments - Baltimore, LLC - 378.

Location: DISTRIBUTION MEETING OF April 2, 2001

Item No.: 364, 367, 368, 369, 370, 371, and 378

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

Come visit the County's Website at www.co.ba.md.us





**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Date: 4 . 2 . 01

Ms. Ronnay Jackson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

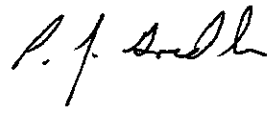
RE: Baltimore County
Item No. 368 JJS

Dear Ms. Jackson:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 1 are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,


for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *rc/rbs*

DATE: April 9, 2001

SUBJECT: Zoning Petitions
Zoning Advisory Committee Meeting of April 2, 2001

DEPRM has no comments for the following zoning petitions:

Item #	Address
364	426 Sherwood Road
367	9400 Liberty Road
368	6631-6635 Baltimore National Pike
369	116 Kinship Road
370	1914 Midland Road
371	Trappe Road Lots 16-20
373	9720 Greenside Drive
377	11 Olivia Court

RE: PETITION FOR SPECIAL HEARING
6631 & 6635 Baltimore National Pike,
SW/S Balto Nat'l Pike, 1350' NW Nuwood Ave
1st Election District, 1st Councilmanic

Legal Owner: H-K Real Estate Holdings, Inc.
Petitioner(s)

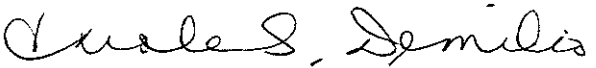
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 01-368-SPH

* * * * *

ENTRY OF APPEARANCE

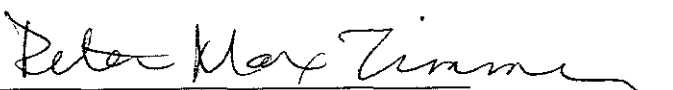
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2001 a copy of the foregoing Entry of Appearance was mailed to Richard Rubin, Esq., Neuberger, Quinn, Gieler, 1 South Street, 27th Floor, Baltimore, MD 21202, attorney for Petitioner(s).


PETER MAX ZIMMERMAN

Gregory J. Morgan, Sr.
5 Nayborly Court
Catonsville, MD 21228
Home Phone 410-744-1696

May 03, 2001

Mr. Lawrence E. Schmidt
Baltimore County Zoning Commissioner
401 Bosley Avenue
Suite 405
Towson, MD 21204

RE: Case #: 01-368-SPH

Application for helistop at property located at 6631 and
6635 Baltimore National Pike

Dear Mr. Schmidt,

I am a resident of a single family home located approximately 200 yards directly behind the proposed site for the above referenced helistop. Due to a previously scheduled engagement both I and my attorney are unable to attend the hearing scheduled for Monday May 7, 2001. Please accept this letter as my formal position on this issue. During the past several months I have noticed a helicopter landing at this location, as I work during the day most of the landings I have witnessed occurred during evening and weekend daytime hours. Most recently I noticed the helicopter landing on Sunday April 29, 2001 at approximately 3:30 P.M.

The community of Patapsco Falls North of which I am a resident is a community of luxury townhomes and single family homes located directly behind the above referenced property separated by a stand of trees and brush. This property abuts the Patapsco State Park as well as the 37 acre Bragg Horticultural Education Center, both areas are a natural refuge for wildlife in a growing suburban area.

The use of this area as a helicopter landing site is totally inappropriate given the close proximity to homes, roadways and natural park land. Each and every time the helicopter lands or departs the noise created is disturbing to the quiet of our community, conversations are interrupted, napping babies are awoken and the general peace and serenity of our community is disturbed. The safety of having a helistop behind our property and large helicopters approaching the landing site above the rooftops of our homes is of concern as well.

I also object to this use because of the fact that the new property owners have failed to show their willingness to be good neighbors by arbitrarily using this site without proper zoning or the support of their neighbors. The former owners of this site, Fox Automotive were good neighbors in Catonsville, the Fox group continually supported community groups, events and the Chamber of Commerce. To my knowledge, any attempts to gain support from the Antwerpen Automotive group for community events has been unsuccessful in the past.

As an active participant in the civic, business and political community I am always a major proponent of discussion and compromise so that all parties involved are satisfied with the outcome of a certain situation. However, at this time I must ask that you decline the above referenced application or at the very least postpone this decision until the applicants meet with the community that will be most affected by this decision.

Sincerely,



Gregory J. Morgan, Sr.

01-368-SPH

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

JOSEPH LARSON

105 W. CHESAPEAKE AVE.

Stanford He ss

STEVE SHEIK

2104 N. SCOTT ST. #33, ARLINGTON, VA

Gerald Henning

341 Anderson Ave, Rockville, MD

Richard Rubin

One South St 27th Floor 21202

Ralph Bernstein

One South St 27th Floor 21202

Roy Taylor

11504 Jerome Ave White mnd 21162



Case Number 01-368-SPH

PLEASE PRINT LEGIBLY

PROTESTANT'S SIGN-IN SHEET

[illegible]

Revised 4/17/00

JMK
5/7/01

LAW OFFICES
MARGOLIS, PRITZKER & EPSTEIN, P.A.

SUITE 100
405 EAST JOPPA ROAD
TOWSON, MARYLAND 21286

AARON MARGOLIS

April 20, 2001

TELEPHONE
(410) 823-2222
TELECOPIER
(410) 337-0098

Baltimore County Zoning Commissioner
County Courts Building
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

Re: Case No.: 01-368-SPH

Application to use property 6631 and 6635 Baltimore National Pike for helistop
Date of Hearing: 5/7/01, 9:00 a.m.

Dear Sir:

This office represents Russel Toyota, 6700 Baltimore National Pike, Russel Mazda/Subaru/Volkswagen at 6624 Baltimore National Pike, and Russel BMW at 6616 Baltimore National Pike. These are all automobile sales and service establishments located directly across the road from the property which is the subject of this proceeding. In behalf of all of those establishments, we wish to enter the strongest possible protest to the subject application to establish of the proposed helistop, for the following reasons:

1. The noise and vibration resulting from the helicopters taking off and landing on the proposed site is very disturbing to the personnel and patrons of our clients' establishments. Our clients' sales personnel are continuously out of doors showing the car inventories to perspective buyers and the noise makes it impossible to communicate and disrupts and distracts everyone during the entire time of the helicopter maneuvers.
2. The showrooms of our clients' facilities have very large display windows which are caused to vibrate and shake during the helicopter descents and take-offs. This can be very dangerous to persons and property in and about the showrooms.
3. The proposed helistop site is adjacent to the eastbound lanes of the Baltimore National Pike, a very heavily traveled artery in and to the Baltimore Metropolitan area. The helicopter landings and take-offs, both visually and noise producing, is very distracting to drivers and presents a serious safety hazard to the general public.

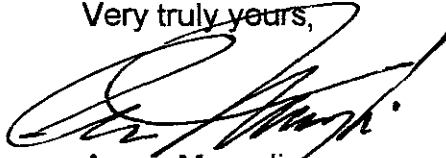
Prot Ex #1

Baltimore County Zoning Commissioner
April 20, 2001
Page Two

4. It is commonly accepted in the automobiles sales and service business to draw public attention to a particular facility. The proposed site, existing among competitive sales and service facilities will unfairly draw attention to the facility at the site and distract the customers at the facilities across the road. Notwithstanding that the use of the site will be a nuisance and hazard, it will also create a competitive disadvantage to the other dealerships.
5. The approval of the Application will establish an unnecessary and unwarranted precedent. How would other applicants for helistops nearby be treated and would this create an unfair advantage for this one dealership?

For all of the above reasons, we respectfully urge that the Application in this matter be denied.

Very truly yours,

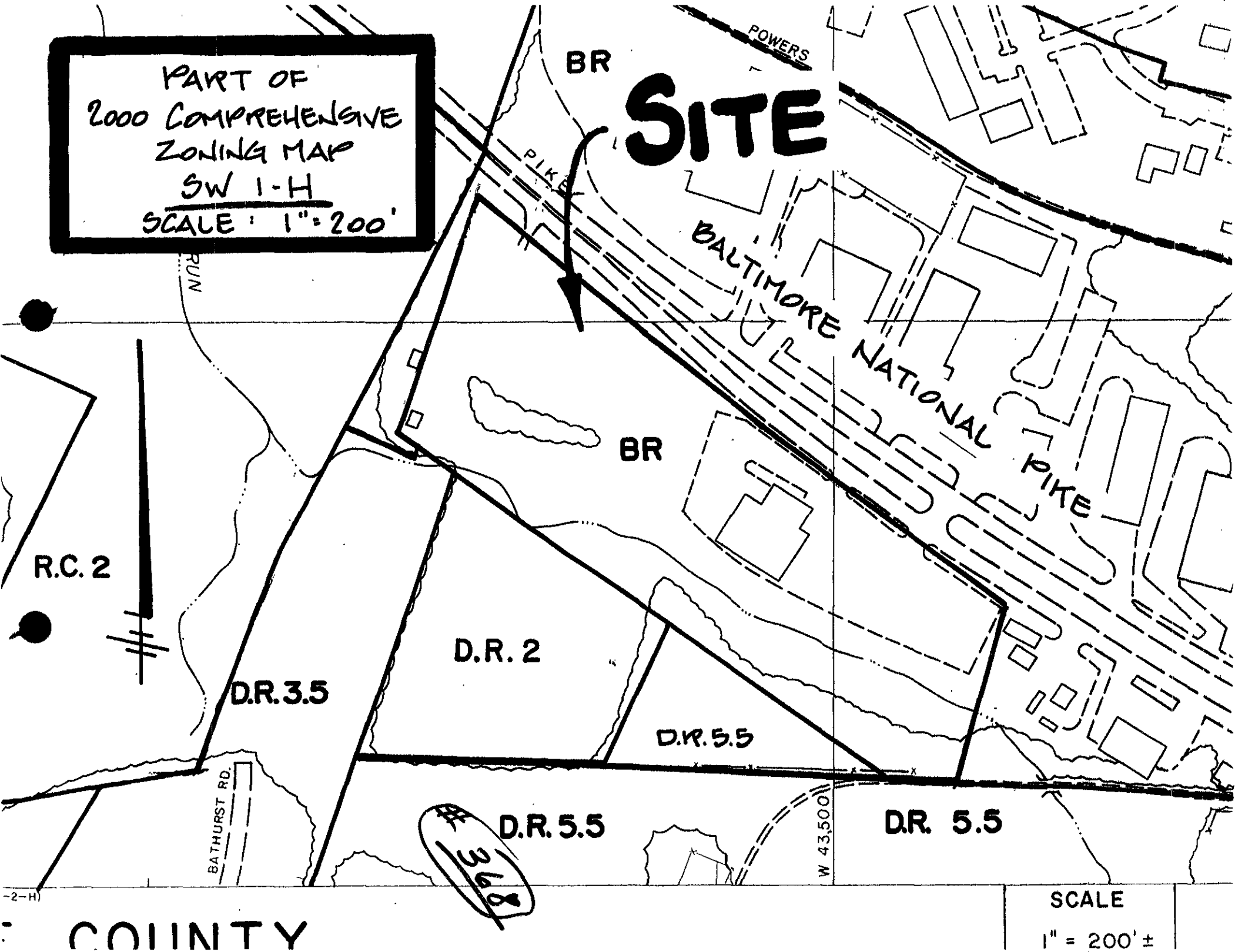


Aaron Margolis

AM/cm

cc: Russel Motor Cars, Inc.

PART OF
2000 COMPREHENSIVE
ZONING MAP
SW 1-H
SCALE: 1"=200'



the state court proceeding, *id.*, § 2254(d)(7), and whether the state court's factual determinations were fairly supported by the record, *id.*, § 2254(d)(8). Cf. *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 746, 9 L.Ed.2d 770 (1963). Since none of these questions would even arise if the Court had held these actions properly brought under § 1983, it seems a good deal premature to proclaim today's decision a major victory in our continuing effort to achieve a harmonious and healthy federal-state system.



411 U.S. 624, 36 L.Ed.2d 547
CITY OF BUREBANK et al.,
Appellants,
v.
LOCKHEED AIR TERMINAL
INC. et al.
No. 71-1687.
Argued Feb. 20, 1973.
Decided May 14, 1973.

IV

In short, I see no basis for concluding that jurisdiction under § 1983 is, in this instance, pre-empted by the habeas corpus remedy. Respondents' effort to bring these suits under the provisions of the Ku Klux Klan Act should not be viewed as an attempted circumvention of the exhaustion requirement of the habeas corpus statute, for the effort does not in any sense conflict with the policies underlying that requirement.²⁴ By means of these suits, they demand an immediate end to action under color of state law that has the alleged effect of violating fundamental rights guaranteed by the Federal Constitution. The Ku Klux Klan Act was designed to afford an expeditious federal hearing for the resolution of precisely such claims as these. Since I share the Court's view that exhaustion of state judicial remedies is not required in any suit properly brought in federal court under § 1983, *ante*, at 1829-1830, and since I am convinced that respondents have properly invoked the re-

isdictional grant of § 1983, I would affirm the judgment of the Court of Appeals.

Action was brought by owner and operator of airport and interstate air carrier against city and certain of its officers for judgment declaring city ordinance invalid. The United States District Court for the Central District of California, 318 F.Supp. 914, entered judgment for plaintiffs and the city appealed. The United States Court of Appeals for the Ninth Circuit, 457 F.2d 667, affirmed and an appeal was taken. The Supreme Court, Mr. Justice Douglas, held that city ordinance prohibiting jet aircraft from taking off between the hours of 11 p. m. and 7 a. m. from airport was invalid because Congress by its enactment of Federal Aviation Act and the Noise Control Act has preempted state and local control over aircraft noise.

Affirmed.

24 In a case where the habeas corpus statute does provide an available and appropriate remedy, and where a prisoner's selection of an alternative remedy would undermine and effectively nullify the habeas corpus exhaustion requirement, it would, of course, be possible to view the suit as an impermissible attempt to circumvent that requirement. But by the same token, if a prisoner seeks to challenge only the conditions of his confinement—in which case the purpose underlying the exhaustion rule do not come into

(Circuit 93 S.Ct. 1964 (1973))

Mr. Justice Rehnquist, with whom Mr. Justice Stewart, Mr. Justice White and Mr. Justice Marshall joined, filed a dissenting opinion.

1. Municipal Corporations § 83

Noise Control Act of 1972 reaffirms and reinforces conclusion that Federal Aviation Administration, in conjunction with the Environmental Protection Agency, has full control over aircraft noise preempting state and local control. Federal Aviation Act of 1958, § 101 et seq., 307, 611, 1108 as amended 49 U.S.C.A. §§ 1301 et seq., 1348, 1431, 1508; Noise Control Act of 1972, § 7(a), 86 Stat. 1234; U.S.C.A. Const. art. 6, cl. 2.

2. States § 4.14

Historic police powers of states are not to be superseded by federal statute unless that is the clear and manifest purpose of Congress.

3. States § 4.14

In absence of express provision of preemption, congressional purpose to supersede historic police powers of states may be evidenced by a scheme of federal regulation which is so pervasive as to make reasonable the inference that Congress left no room for states to supplement it or by an act of Congress which touches a field in which federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.

4. Municipal Corporations § 83

City ordinance prohibiting jet aircraft from taking off between the hours of 11 p. m. and 7 a. m. from airport was invalid because Congress by its enactment of Federal Aviation Act and the Noise Control Act has preempted state and local control over aircraft noise. Federal Aviation Act of 1958, § 101 et seq., 307, 611, 1108 as amended 49 U.S.C.A. §§ 1301 et seq., 1348, 1431, 1508; Noise Control Act of 1972, § 7(a), 86 Stat. 1234; U.S.C.A. Const. art. 6, cl. 2.

5. Aviation § 224

Any regulations adopted by the Federal Aviation Administration to control noise pollution must be consistent with highest degree of safety, and the interdependence of these facts requires a uniform and exclusive system of federal regulation if congressional objectives underlying Federal Aviation Act are to be fulfilled. Federal Aviation Act of 1958, § 307(a), 611(d)(3) as amended 49 U.S.C.A. §§ 1348(a), 1431(d)(3).

Richard J. Sieg, Jr., Beverly Hills, Cal., for appellants.

Nicholas C. Yost, Los Angeles, Cal., for the State of California, as amicus curiae, by special leave of Court.

Daniel M. Friedman, Washington, D. C., for the U. S., as amicus curiae, by special leave of Court.

Warren M. Christopher, Los Angeles, Cal., for appellees.

Mr. Justice DOUGLAS delivered the opinion of the Court.

The Court in *Cooley v. Board of Wardens*, 12 How. 299, 13 L.Ed. 996, first stated the rule of pre-emption which is the critical issue in the present case. Speaking through Mr. Justice Curtis, it said:

"Now the power to regulate commerce, embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation."

Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan or regulation, may justly be said to be of such a nature as to require

exclusive legislation by Congress." *Id.*, at 319.

This suit brought by appellees asked for an injunction against the enforcement of an ordinance adopted by the City Council of Burbank, California, which made it unlawful for a so-called pure jet aircraft to take off from the Hollywood-Burbank Airport between 11 p. m. of one day and 7 a. m. the next day, and making it unlawful for the operator of that airport to allow any such aircraft to take off from that airport during such periods.¹ The only regularly scheduled flight affected by the ordinance was an intrastate flight of Pacific Southwest Airlines originating in Oakland, California, and departing from Hollywood-Burbank Airport for San Diego every Sunday night at 11:30.

The District Court found the ordinance to be unconstitutional on both Supremacy Clause and Commerce Clause grounds. 318 F.Supp. 914. The Court of Appeals affirmed on the grounds of the Supremacy Clause both as respects pre-emption and as respects conflict.² 457 F.2d 667. The case is here on appeal. 28 U.S.C. § 1254(2). We noted probable jurisdiction. 409 U.S. 840, 98 S.Ct. 59, 34 L.Ed.2d 78. We affirm the Court of Appeals.

1 Burbank Municipal Code § 20-52.1. The ordinance provides an exception for "emergency" flights approved by the City Police Department.

2 The Court of Appeals held that the Burbank ordinance conflicted with the runway preference order, BURK 71005JH, issued by the FAA Chief of the Airport Traffic Control Tower at the Hollywood-Burbank Airport. The order stated that "[p]rocedures established for the Hollywood-Burbank airport are designed to reduce community exposure to noise to the lowest practicable minimum. . . . The Court of Appeals concluded that the ordinance 'interferes with the balance set by the FAA among the interests with which it is empowered to deal, and frustrates the full accomplishment of the goals of Congress.'" 457 F.2d 667, 676. In view of our disposition of this appeal under the doctrine of pre-emption, we need not reach this question.

The Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. § 1301 et seq., as amended by the Noise Control Act of 1972, 86 Stat. 1234, and the regulations under it, 14 CFR pts. 71, 73, 75, 77, 91, 93, 95, 97, are central to the question of pre-emption.

Section 1108(a) of the Federal Aviation Act, 49 U.S.C. § 1508(a), provides in part, "The United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States. . . . By §§ 307(a), (c) of the Act, 49 U.S.C. §§ 1348(a), (c), the Administrator of the Federal Aviation Administration (FAA) has been given broad authority to regulate the use of the navigable airspace, "in order to insure the safety of aircraft and the efficient utilization of such airspace. . . ." and "for the protection of persons and property on the ground. . . ."

The Solicitor General, though arguing against pre-emption, concedes that as respects "airspace management" there is pre-emption. That, however, is a fatal concession, for as the District Court found: "The imposition of curfew ordinances on a nationwide basis would result in a bunching of flights in those

3. Section 307 provides in relevant part as follows:

"(a) The Administrator is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace.

(c) The Administrator is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects."

hours immediately preceding the curfew. This bunching of flights during these hours would have the twofold effect of increasing an already serious congestion problem and actually increasing, rather than relieving, the noise problem by increasing flights in the period of greatest annoyance to surrounding communities. Such a result is totally inconsistent with the objectives of the federal statutory and regulatory scheme." It also found "[t]he imposition of curfew ordinances on a nationwide basis would cause a serious loss of efficiency in the use of the navigable airspace."

Curfews such as Burbank has imposed would, according to the testimony at the trial and the District Court's findings, increase congestion, cause a loss of efficiency, and aggravate the noise problem. FAA has occasionally enforced curfews. See *Virginians for Dulles v. Volpe*, D.C., 344 F.Supp. 573. But the record shows that FAA has consistently opposed curfews, unless managed by it, in the interests of its management of the "navigable airspace."

As stated by Judge Doelling in *American Airlines v. Hemstead*, D.C., 272 F.Supp. 226, 230, *aff'd*, 2 Cir., 398 F.2d 369:

"The aircraft and its noise are indivisible; the noise of the aircraft ex-

4. Section 7(a) provides:

"The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the (1) adequacy of Federal Aviation Administration flight and operational noise controls; (2) adequacy of noise abatement standards on new and existing aircraft, together with recommendations on the retrofitting and phase-out of existing aircraft; (3) implications of identifying and achieving levels of cumulative noise exposure around airports; and (4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within nine months after the date of the enactment of this Act."

5. Section 611 of the Federal Aviation Act, 49 U.S.C. § 1431, was added in July 1973.

tends outward from it with the same inseparability as its wings and tail assembly; to exclude the aircraft noise from the Town is to exclude the aircraft; to set a ground level decibel limit for the aircraft is directly to exclude it from the lower air that it cannot use without exceeding the decibel limit."

The Noise Control Act of 1972, which was approved October 27, 1972, provides that the Administrator "after consultation with appropriate Federal, State, and local agencies and interested persons" shall conduct a study of various facets of the aircraft noise problems and report to the Congress within nine months.⁴ i. e., by July 1973. The 1972 Act, by amending § 611 of the Federal Aviation Act,⁵ also invokes the Environmental Protection Agency (EPA) in the comprehensive scheme of federal control of the aircraft noise problem. Under the amended § 611(b)(1), 86 Stat. 1238, 49 U.S.C. § 1431(b)(1) (1970 ed., Supp. II) FAA, after consulting with EPA, shall provide "for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title."

Act of July 21, 1968, Pub.L. 90-411, 82 Stat. 395. Prior to amendment by the 1972 Act, it provided in part that the Administrator, "[i]n order to afford present and future relief and protection to the public from unnecessary aircraft noise and sonic boom, . . . shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom." 40 U.S.C. § 1431(a).

6. Section 611(b)(1), as amended, reads: "In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such

1858 Section 611(b)(2), as amended, 86 Stat. 1239, 49 U.S.C. § 1431(b)(2) (1970 ed., Supp. 11), provides that future certification for aircraft operations shall not issue unless the new aircraft noise requirements are met. Section 611(c)(1), as amended, provides that not later than July 1973 EPA shall submit to FAA proposed regulations to provide such "control and abatement of aircraft noise and sonic boom" as EPA determines is "necessary to protect the public health and welfare." FAA is directed within 30 days to publish the proposed regulations in a notice of proposed rulemaking. Within 60 days after that publication, FAA is directed to commence a public hearing on the proposed rules. Section 611(c)(1). That subsection goes on to provide that within "a reasonable time after the conclusion of such hearing and after consultation with EPA," FAA is directed either to prescribe the regulations substantially as submitted by EPA,

or prescribe them in modified form, or publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA's submission together with its reasons therefor.

Section 611(c)(2), as amended, also provides that if EPA believes that FAA's action with respect to a regulation proposed by EPA "does not protect the public health and welfare from aircraft noise or sonic boom," EPA shall consult with FAA and may request FAA to review and report to EPA on the advisability of prescribing the regulation originally proposed by EPA. That request shall be published in the Federal Register; FAA shall complete the review requested and report to EPA in the time specified together with a detailed statement of FAA's findings and the reasons for its conclusion and shall identify any impact statement filed under § 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 853, 42

United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall— (i) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on— (1) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the

1832 U.S.C. § 4332(2)(C), with respect to FAA's action. FAA's action, if adverse to EPA's proposal, shall be published in the Federal Register.

Congress did not leave FAA to act at large but provided in § 611(d), as amended, particularized standards:

"In prescribing and amending standards and regulations under this section, the FAA shall—

"(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act and the Department of Transportation Act;

"(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

"(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

"(4) consider whether any proposed standard or regulation is economically type of aircraft, aircraft engine, appropriate, technologically practicable, and appropriate for the particular plane, or certificate to which it will apply; and

"(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section."

[1] The original complaint was filed on May 14, 1970; the District Court entered its judgment November 30, 1970; and the Court of Appeals announced its

judgment as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes."

Section 611(c)(3) of the Federal Aviation Act, as amended, provides that if FAA files no statement under § 102(2)(C) of the National Environmental Policy Act "then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within

judgment and opinion March 22, 1972— all before the Noise Control Act of 1972 was approved by the President on October 27, 1972. That Act reaffirms and reinforces the conclusion that FAA, now in conjunction with EPA, has full control over aircraft noise, pre-empting state and local control.

[2-4] There is, to be sure, no express provision of pre-emption in the 1972 Act. That, however, is not decisive. As we stated in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447:

"Congress legislated here in a field which the States have traditionally occupied. . . . So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. . . . Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. . . . Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. . . . Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. . . . Or the state policy may produce a result inconsistent with the objective of the federal statute."

It is the pervasive nature of the scheme of federal regulation of aircraft noise

such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects (including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (1) EPA's proposed regulations."

Section 102 reads in part as follows: "The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the

standards and regulations in the insurance, amendment, modification, suspension, or revocation of any certificate authorized by this title. No exemption with respect to any standard or regulation under this section may be granted under any provision of this Act unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted."

7 Subsection (b)(2) provides:

"The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d)."

8 Section 102 reads in part as follows:

"The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the

that leads us to conclude that there is pre-emption. As Mr. Justice Jackson stated, concurring in *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303, 64 S.Ct. 950, 956, 8 L.Ed. 1283:

"Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls."

Both the Senate and House Committees included in their Reports clear statements that the bills would not change the existing pre-emption rule. The House Report stated:⁹ "No provision of the bill is intended to alter in any way the relationship between the authority of the Federal Government and that of the State and local governments that existed with respect to matters covered by section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill." The Senate Report stated: "States and local governments are preempted from establishing or enforcing noise emission standards for aircraft unless such standards are identical to standards prescribed under this bill. This does not address responsibilities or powers of airport operators, and no provision of the bill is intended to alter in any way the relationship between the authority of the Federal Government and that of State and local governments that existed with respect to matters covered by section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill."

These statements do not avail appellants. Prior to the 1972 Act, § 611(a) provided that the Administrator "shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom." 82 Stat. 395. Under § 611(b)(3) the Administrator was required to "consider whether or any proposed standard, rule, or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest." 82 Stat. 395. When the legislation which added this section to the Federal Aviation Act it was considered at Senate hearings, Senator Monroney (the author of the 1958 Act) asked Secretary of Transportation Boyd whether the proposed legislation would "to any degree preempt State and local government regulation of aircraft noise and sonic boom."¹⁰ The Secretary requested leave to submit a written opinion, and in a letter dated June 22, 1968, he stated:

"The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. . . . H.R. 3400 would merely expand the Federal Government's role in a field already preempted. It would not change this preemption. State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft."

According to the Senate Report,¹¹ it was "not the intent of the committee in recommending this legislation to effect any change in the existing apportionment of powers between the Federal and State and local governments," and the Report

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concurrent in the views set forth by the Secretary in his letter.¹⁴

¹⁴ The Senate version of the 1972 Act as it passed the Senate contained an express pre-emption section.¹⁵ But the Senate version never was presented to the House. Instead, the Senate passed, with amendments, the House version,¹⁶ the House, also with amendments, then concurred in the Senate amendments.¹⁷ The Act as passed combined provisions of both the House and Senate bills on the subject that each had earlier approved. When the blended provisions of the present Act were before the House, Congressman Staggers, Chairman of the House Committee on Interstate and Foreign Commerce, in urging the House to accept the amended version, said:¹⁸

"I cannot say what industry's intention may be, but I can say to the gentleman what my intention is in trying to get this bill passed. We have evidence that across America some cities and States are trying to pass noise regulations. Certainly we do not want that to happen. It would harass industry and progress in America. That is the reason why I want to get this bill passed during this session."

When the House approved the blended provisions of the bill, Senator Tunney moved that the Senate concur. He made

14. The letter from the Secretary of Transportation also expressed the view that "the proposed legislation will not affect the rights of a State or local public agency, as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners acting as proprietors can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory." (Emphasis added.) This portion as well was quoted with approval in the Senate Report.

Appellants and the Solicitor General submit that this indicates that a municipality with jurisdiction over an airport has the power to impose a curfew on the airport, notwithstanding federal responsibility in the area. But, we are concerned here not with an ordinance imposed by

clearly that the regulations to be considered by EPA for recommendation to FAA would include:

"proposed means of reducing noise in airport environments through the application of emission controls on aircraft, the regulation of flight patterns and aircraft and airport operations, and modifications in the number, frequency, or scheduling of flights [as well as] . . . the imposition of curfews on noisy airports, the imposition of flight path alterations in areas where noise was a problem, the imposition of noise emission standards on new and existing aircraft—with the expectation of a retrofit schedule to abate noise emissions from existing aircraft—the imposition of controls to increase the load factor on commercial flights, or other reductions in the joint use of airports, and such other procedures as may be determined useful and necessary to protect public health and welfare." (Emphasis added.)

The statements by Congressman Staggers and Senator Tunney are weighty ones. For Congressman Staggers was Chairman of the House Committee on Interstate and Foreign Commerce which submitted the Noise Control Act and Report; and Senator Tunney was a mem-

the City of Burbank as "proprietor" of the airport, but with the exercise of police power. While the Hollywood-Burbank Airport may be the only major airport which is privately owned, many airports are owned by one municipality yet physically located in another. For example, the principal airport serving Cincinnati is located in Kentucky. Thus, authority is not necessarily congruent with the police power. We do not consider here what limits, if any, apply to a municipality as a proprietor.

15. 118 Cong. Rec. 38808.

16. *Id.*, at 38886.

17. *Id.*, at 37075.

18. *Id.*, at 37083.

19. *Id.*, at 37317.

9 H.R. Rep. No. 82-512, p. 10.

10. S. Rep. No. 92-1160, pp. 10-11, U.S. Code Cong. & Admin. News 1972, p. 4663.

11. See n. 5, *supra*.

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ber of the Senate Committee on Public Works, which submitted the Act and Report.

When the President signed the bill he stated that "many of the most significant sources of noise move interstate commerce and can be effectively regulated only at the federal level."²⁰

[5] Our prior cases on pre-emption are not precise guidelines in the present controversy, for each case turns on the peculiarities and special features of the federal regulatory scheme in question. Cf. *Hines v. Davidowitz*, 312 U.S. 62, 61 S.Ct. 399, 85 L.Ed. 581; *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 80 S.Ct. 813, 4 L.Ed.2d 852. Control of noise is of course deep-seated in the police power of the States. Yet the pervasive control vested in EPA and in FAA under the 1972 Act seems to us to leave no room for local curfews or other local controls. What the ultimate remedy may be for aircraft noise which plagues many communities and tens of thousands of people is not known. The procedures under the 1972 Act are under way.²¹ In addition the Administrator has imposed a

20. 8 Weekly Comp. Pres. Doc. 1582, 1583 (Oct. 28, 1972).

21. The Administrator has adopted regulations prescribing noise standards which must be met as a condition to type certification for all new subsonic (subjet-powered) aircraft. 14 CFR pt. 38. On January 30, 1973, the FAA gave advance notice of proposed rulemaking for the control of fleet noise levels (FNL) of airplanes operating in interstate commerce. 38 Fed. Reg. 2769. (The regulations would not pertain to carriers also operating in foreign commerce.) The proposed rules are designed to limit FNL, prior to July 1, 1978, when the covered aircraft become subject to the requirements of 14 CFR pt. 38.

The FNL would be determined as a function of the takeoff and approach noise levels of each airplane in the fleet and the number of takeoffs and landings of the fleet. Until July 1, 1976, the cumulative noise level of any fleet subject to regulation could not exceed the FNL during the previous 90-day base period. In 1976 each fleet would be required to reduce its

variety of regulations relating to takeoff and landing procedures and runway preferences. The Federal Aviation Act requires a delicate balance between safety and efficiency. 49 U.S.C. § 1348(a), and the protection of persons on the ground. 49 U.S.C. § 1348(c). Any regulations adopted by the Administrator to control noise pollution must be consistent with the "highest degree of safety." 49 U.S.C. § 1431(d)(3). The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.

If we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, 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.²² The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded. In 1960 FAA rejected a proposed restriction on jet operations at the Los Angeles airport between 10 p. m. and 7 a. m. be-

FNL, by 50% of the difference between the original base-period level and the level ultimately required by 14 CFR pt. 38.

22. In order to insure efficient and safe use of the navigable airspace, FAA uses centralized "flow control," regulating the number of aircraft that will be accepted in a given area and restricting altitudes and routes that may be flown. Flow control has resulted in the Los Angeles Air Route Traffic Control Center holding aircraft on the ground at the Hollywood-Burbank Airport.

Prior to April 1970, 21 regional Air Route Traffic Control Centers exercised independent control over traffic flow in their areas. In April 1970 FAA established a "central flow facility" to coordinate flow control throughout the Air Traffic Control system. This change was necessitated because no regional center "had enough information to make a judgment based on the overall condition of the ATC system." 9 Month Annual Report of the Secretary of Transportation for Fiscal Year 1970.

cause such restrictions could "create critically serious problems to all air transportation patterns." 25 Fed. Reg. 1764-1766. The complete FAA statement said:

"The proposed restriction on the use of the airport by jet aircraft between the hours of 10 p. m. and 7 a. m. under certain surface wind conditions has also been reevaluated and this provision has been omitted from the rule. The practice of prohibiting the use of various airports during certain specific hours could create critically serious problems to all air transportation patterns. The network of airports throughout the United States and the constant availability of these airports are essential to the maintenance of a sound air transportation system. The continuing growth of public acceptance of aviation as a major force in passenger transportation and the increasingly significant role of commercial aviation in the nation's economy are accomplishments which cannot be inhibited if the best interest of the public is to be served. It was concluded therefore that the extent of relief from the noise problem which this provision might have achieved would not have compensated the degree of restriction it would have imposed on domestic and foreign Air Commerce."

This decision, announced in 1960, remains peculiarly within the competence of FAA, supplemented now by the input of EPA. We are not at liberty to diffuse the powers given by Congress to FAA and EPA by letting the States or municipalities in on the planing. If that change is to be made, Congress alone must do it.

Affirmed.

Mr. Justice REHNQUIST, with whom Mr. Justice STEWART, Mr. Justice WHITE, and Mr. Justice MARSHALL, join, dissenting.

The Court concludes that congressional legislation dealing with aircraft noise

has so "permeated" that field that Congress has *impliedly* pre-empted it, and therefore the ordinance of the city of Burbank here challenged is invalid under the Supremacy Clause of the Constitution. The Court says that the 1972 "Act reaffirms and reinforces the conclusion that FAA, now in conjunction with EPA, has full control over aircraft noise, pre-empting state and local control." *Ante*, at 1859. Yet the House and Senate committee reports explicitly state that the 1972 Act to which the Court refers was *not* intended to alter the balance between state and federal regulation which had been struck by earlier congressional legislation in this area. The House Report, H.R. Rep. No. 92-842, in discussing the general pre-emptive effect of the entire bill, stated:

"The authority of State and local government to regulate use, operation, or movement of products is not affected at all by the bill. (The preemption provision discussed in this paragraph does not apply to aircraft. See discussion of aircraft noise below.)" *Id.*, at 8.

The report went on to state specifically:

"No provision of the bill is intended to alter in any way the relationship between the authority of the Federal Government and that of State and local governments that existed with respect to matters covered by section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill." *Id.*, at 10.

The report of the Senate Public Works Committee, S. Rep. No. 92-1160, expressed the identical intent with respect to pre-emption:

"States and local governments are preempted from establishing or enforcing noise emission standards for aircraft [see *American Airlines v. Hemphstead*, 272 F.Supp. 226 (E.D.N.Y. 1967)], unless such standards are identical to standards prescribed under this bill. This does not address responsibilities or powers of airport operators, and no provision of the bill

is intended to alter in any way the relationship between the authority of the Federal Government and that of State and local governments that existed with respect to matters covered by section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill." *Id.*, at 10-11.

In the light of these specific congressional disclaimers of pre-emption in the 1972 Act, reference must necessarily be had to earlier congressional legislation on the subject.¹ It was on the basis of these earlier enactments that the Court of Appeals concluded that Congress had pre-empted the field from state or local regulation of the type that the city of Burbank enacted.

The Burbank ordinance prohibited jet takeoffs from the Hollywood-Burbank Airport during the late evening and early morning hours. Its purpose was to afford local residents at least partial relief, during normal sleeping hours, from the noise associated with jet airplanes. The ordinance in no way dealt with flights over the city, cf. *American Airlines, Inc. v. Town of Hempstead*, 272 F.Supp. 226 (E.D.N.Y. 1967), *aff'd*, 398 F.2d 369 (CA2 1968), cert. denied, 393 U.S. 1017, 83 S.Ct. 620, 21 L.Ed.2d 561 (1969), nor did it categorically prohibit all jet takeoffs during those hours.

Appellees do not contend that the noise produced by jet engines could not reasonably be deemed to affect adversely the health and welfare of persons constantly exposed to it; control of noise, sufficiently loud to be classified as a public nuisance at common law, would be a type of regulation well within the traditional scope of the police power possessed by States and local governing

1. Statements or comments of individual Senators or Representatives on the floor of either House are not to be given great, let alone controlling, weight in ascertaining the intent of Congress as a whole, see e.g., *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474, 41 S.Ct. 172, 176, 65 L.Ed. 340 (1921); *McCaughy v. Hershey Chocolate Co.*, 283 U.S. 488, 494,

bodies. Because noise regulation has traditionally been an area of local, not national, concern, in determining whether congressional legislation has, by implication, foreclosed remedial local enactments "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). This assumption derives from our basic constitutional division of legislative competence between the States and Congress; from "due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy . . ." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 243, 79 S.Ct. 773, 779, 3 L.Ed.2d 775 (1959) (emphasis added). Unless the requisite pre-emptive intent is abundantly clear, we should hesitate to invalidate state and local legislation for the added reason that "the state is powerless to remove the ill effects of our decision, while the national government, which has the ultimate power, remains free to remove the burden." *Penn Dairies, Inc. v. Milk Control Comm'n*, 318 U.S. 261, 275, 63 S.Ct. 617, 624, 87 L.Ed. 748 (1943).

Since Congress' intent in enacting the 1972 Act was clearly to retain the status quo between the federal regulation and local regulation, a holding of implied pre-emption of the field depends upon whether two earlier congressional enactments, the Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. § 1301 et seq., and the 1968 noise abatement amend-

51 S.Ct. 510, 512, 75 L.Ed. 1183 (1931); *cf. Wright v. Vinton Branch of Moundville Trust Bank*, 300 U.S. 440, 464, 57 S.Ct. 550, 563, 81 L.Ed. 730 (1937). This guidance is particularly appropriate in this case, as the statements of two individual Congressmen quoted in the Court's opinion are at odds with the views expressed in the committee reports.

ment to that Act, 49 U.S.C. § 1431, manifested the clear intent to preclude local regulations, that our prior decisions require.

The 1958 Act was intended to consolidate in one agency in the Executive Branch the control over aviation that had previously been diffused within that branch. The paramount substantive concerns of Congress were to regulate federally all aspects of air safety, see, e.g., 49 U.S.C. § 1422 and, once aircraft were in "flight," airframe management, see, e.g., 49 U.S.C. § 1348(a). See S. Rep.No.1811, 85th Cong., 2d Sess., 5-6, 13-15 U.S.Code Cong. & Admin. News 1958, p. 3741. While the Act might be broad enough to permit the Administrator to promulgate takeoff and landing rules to avoid excessive noise at certain hours of the day, see 49 U.S.C. § 1348 (c), Congress was not concerned with the problem of noise created by aircraft and did not intend to preempt its regulation. Furthermore, while Congress clearly intended to pre-empt the States from regulating aircraft in flight, the author of the bill, Senator Monroney, specifically stated that FAA would not have control "over the ground space" of airports.²

The development and increasing use of civilian jet aircraft resulted in congressional concern over the noise associated with those aircraft. Hearings were held over a period of several years, resulting in a report but no legislation. The report of the House Committee on Interstate and Foreign Commerce, H.R. Rep.No.36, 88th Cong., 1st Sess., shows clearly that the 1958 Act was thought by

at least some in Congress neither to pre-empt local legislative action to alleviate the growing noise problem, nor to prohibit local curfews:

"Until Federal action is taken, the local governmental authorities must be deemed to possess the police power necessary to protect their citizens and property from the unreasonable invasion of aircraft noise. The wisdom of exercising such power on the manner of the exercise is a problem to be resolved on the local governmental level."

"Airports in the United States, as a general rule, are operated by a local governmental authority, either a municipality, a county, or some independent unit. These airport operators are closer, both geographically and politically, to the problem of the conflict of interests between those citizens who have been adversely affected by the aircraft noise and the needs of the community for air commerce. Some airport operators have exercised the proprietary right to restrict in a reasonable manner, the use of any runway by limiting either the hours during which it may be used or the types of civil transport aircraft that may use it." H.R.Rep.No.36, 88th Cong., 1st Sess., 27.

Several years after the conclusion of these hearings, Congress enacted the 1968 noise abatement amendment, 82 Stat. 395, which added § 611 to the 1958 Act, 49 U.S.C. § 1431, and which was the first congressional legislation dealing with the problem of aircraft noise. On its face, § 611 as added by the 1968

2. Hearings before the Subcommittee on Aviation of the Senate Committee on Interstate and Foreign Commerce (hereafter Commerce Committee), on S. 4980, Federal Aviation Agency Act, 85th Cong., 2d Sess., 279.

3. "(a) (Constitutions): standards: rules and regulations. "In order to afford present and future relief and protection to the public from unnecessary aircraft noise and sonic boom,

amendment neither pre-empted the general field of regulation of aircraft noise nor dealt specifically with the more limited question of curfews. The House Committee on Interstate and Foreign Commerce, after reciting the serious proportions of the problem, outlined the type of federal regulation that the Act sought to impose:

"The noise problem is basically a conflict between two groups or interests. On the one hand, there is a group who provide various air transportation services. On the other hand there is a group who live, work, and go to schools and churches in communities near airports. The latter group is frequently burdened to the point where they can neither enjoy nor reasonably use their land because of noise resulting from aircraft operations. Many of them derive no direct benefit from the aircraft operations which create the unwanted noise. Therefore, it is easy to understand why they complain, and complain most vehemently. The possible solutions to this demanding and vexing problem which appear to offer the most promise are (1) new or modified engine and airplane designs, (2) special flight op-

eration, or revocation of any certificate authorized by this subchapter.

"(b) Considerations determinative of standards, rules, and regulations.

"In prescribing and amending standards, rules, and regulations under this section, the Administrator shall—

"(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this chapter and chapter 23 of this title;

"(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

"(3) consider whether any proposed standard, rule, or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

"(4) consider whether any proposed standard, rule, or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of

erating techniques and procedures, and (3) planning for land use in areas adjacent to airports so that such land use will be most compatible with aircraft operations. *This legislation is directed toward the primary problem; namely, reduction of noise at its source.*" (Emphasis added.) H.R. Rep. No. 1463, 90th Cong., 2d Sess., 4.

Far from indicating any total pre-emptive intent, the House Committee observed:

"Rather, the committee expects manufacturers, air carriers, all other segments of the aviation community, and State and local civic and governmental entities to continue and increase their contributions toward the common goal of quiet." *Ibid.*

The Senate Commerce Committee's view of the House bill followed a similar vein:

"This investment by the industry is representative of one of the avenues of approach to aircraft noise reduction, that is, the development of aircraft which generate less noise. Another approach to noise reduction, is through the establishment of special

aircraft, aircraft engine, appliance, or certificate to which it will apply; and

"(3) consider the extent to which such standard, rule, or regulation will contribute to carrying out the purposes of this section.

"(c) Amendment, modification, suspension, or revocation of certificate; notice and appeal flight.

"In any action to amend, modify, suspend, or revoke a certificate in which violation [of] aircraft noise or sonic boom standards, rules, or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 1423 of this title, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the Administrator if it finds that control or abatement of aircraft noise or sonic boom and the public interest do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation." 49 U.S.C. § 1431.

CITE AS 68 S.Ct. 1861 (1972)

flight operating techniques and procedures. The third principal control technique which merits serious consideration is the planning for land use in areas near airports so as to make such use compatible with aircraft operations. This is a matter largely within the province of State and local governments. While all of these techniques must be thoroughly studied and employed, the first order of business is to stop the escalation of aircraft noise by imposing standards which require the full application of noise reduction technology.

"A completely quiet airplane will not be developed within the foreseeable future. However, with the technological and regulatory means now at hand, it is possible to reduce both the level and the impact of aircraft noise. Within the limits of technology and economic feasibility, it is the view of the committee that the Federal Government must assure that the potential reductions are in fact realized." S. Rep. No. 1353, 90th Cong., 2d Sess., 2-3, U.S. Code Cong. & Admin. News 1968, p. 2630.

With specific emphasis on pre-emption, the Senate Committee observed:

"Relation to Local Government Initiatives"

"The bill is an amendment to a statute describing the powers and duties of the Federal Government with respect to air commerce. As indicated earlier in this report, certain actions by State and local public agencies, such as zoning to assure compatible land use, are a necessary part of the total attack on aircraft noise. In this connection, the question is raised whether this bill adds or subtracts anything from the powers of State or local governments. It is not the intent of the committee in recommending this legislation to effect any change in the existing apportionment of powers between the Federal and State and local governments.

"In this regard, we concur in the following views set forth by the Secretary in his letter to the committee of June 22, 1968:

"The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. Local noise control legislation limiting the permissible noise level of all overlying aircraft has recently been struck down because it conflicted with Federal regulation of air traffic. *American Airlines v. Town of Hempstead*, 272 F.Supp. 226 (U.S.D.C., E.D., N.Y., 1966). The court said, at 281, 'The legislation operates in an area committed to Federal care, and noise limiting rules operating as do those of the ordinance must come from a Federal source.' H.R. 3400 would merely expand the Federal Government's role in a field already preempted. It would not change this preemption. State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.

"However, the proposed legislation will not affect the rights of a State or local public agency, as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners acting as proprietors can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.

"Just as an airport owner is responsible for deciding how long the runways will be, so is the owner responsible for obtaining noise easements necessary to permit the landing and takeoff of the aircraft. The Federal Government is in no position to require an airport to accept service by larger aircraft, for that purpose, to obtain longer runways. Likewise,

the Federal Government is in no position to require an airport to accept service by noisier aircraft, and for that purpose to obtain additional noise easements. The issue is the service desired by the airport owner and the steps it is willing to take to obtain the service. In dealing with this issue, the Federal Government should not substitute its judgment for that of the States or elements of local government who, for the most part, own and operate our Nation's airports. The proposed legislation is not designed to do this and will not prevent airport proprietors from excluding any aircraft on the basis of noise considerations.

"Of course, the authority of units of local government to control the effects of aircraft noise through the exercise of land use planning and zoning powers is not diminished by the bill.

"Finally, since the flight of aircraft has been preempted by the Federal Government, State and local governments can presently exercise no control over sonic boom. The bill makes no change in this regard." *Id.*, at 6-7, U.S. Code (Cong. & Admin. News 1068, p. 2693).

In terms of pre-emption analysis, the most reasonable reading of § 611 appears to be that it was enacted to enable the Federal Government to deal with the noise problem created by jet aircraft through study and regulation of the "source" of the problem—the mechanical and structural aspects of jet and turbine aircraft design. The authority to "prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom," 49 U.S.C. § 1451(a), while a broad grant of authority to the Administrator, cannot fairly be read as prohibiting the States from enacting every type of measure, which might have the effect of reducing

aircraft noise, in the absence of a regulation to that effect under this section. The statute established exclusive Federal control of the technological methods for reducing the output of noise by jet aircraft, but that is a far cry from saying that it prohibited any local regulation of the times at which the local airport might be available for the use of jet aircraft.

The Court of Appeals found critical to its decision the distinction between the local government as an airport proprietor and the local government as a regulatory agency, which was reflected in the views of the Secretary of Transportation outlined in the Senate Report on the 1968 Amendment. Under its reasoning, a local government unit that owned and operated an airport would not be preempted by § 611 from totally, or, as here, partially, excluding noisy aircraft from using its facilities, but a municipality having territorial jurisdiction over the airport would be preempted from enacting an ordinance having a similar effect. If the statute actually enacted drew this distinction, I would of course respect it. But since we are dealing with "legislative history," rather than the words actually written by Congress into law, I do not believe it is of the controlling significance attributed to it by the court below.

The pre-emption question to which the Secretary's letter was addressed related to "the field of noise regulation insofar as it involves controlling the flight of aircraft" (emphasis added), and thus included types of regulation quite different from that enacted by the city of Burbank that would be clearly precluded. See *American Airlines, Inc. v. Town of Hemetstead, supra*. But more important is the highly practical consideration that the Hollywood-Burbank Airport is probably the only nonfederal airport in the country used by federally certified air carriers that is not owned and operated by a state or local government.⁴ There is

411 U.S. 654 CITY OF BURBANK v. LOOKHEED AIR TERMINAL, INC. 1869
(*The AS 83 S.Ct.*, 1961 (1973))

no indication that this fact was brought to the attention of the Senate Committee, or that the Secretary of Transportation was aware of it in framing his letter. It simply strains credulity to believe that the Secretary, the Senate Committee, or Congress intended that all airports except the Hollywood-Burbank Airport, could enact curfews.

Considering the language Congress enacted into law, the available legislative history, and the light shed by these on the congressional purpose, Congress did not intend either by the 1968 Act or the 1968 Amendment to oust local governments from the enactment of regulations such as that of the city of Burbank. The 1972 Act quite clearly intended to maintain the status quo between federal and local authorities. The legislative history of the 1972 Act, quite apart from its concern with avoiding additional pre-emption, discloses a primary focus on the alteration of procedures within the Federal Government for dealing with problems of aircraft noise already entrusted by Congress to federal competence. 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 are not thereby foreclosed from dealing with the noise problem by every other conceivable method.

¹⁸⁵³ **1A** local governing body that owns and operates an airport is certainly not, by the Court's opinion, prohibited from permanently closing down its facilities. A local governing body could likewise use its traditional police power to prevent the establishment of a new airport or the expansion of an existing one within its territorial jurisdiction by declining to grant the necessary zoning for such a facility. Even though the local

government's decision in each case were motivated entirely because of the noise associated with airports, I do not read the Court's opinion as indicating that such action would be prohibited by the Supremacy Clause merely because the Federal Government has undertaken the responsibility for some aspects of aircraft noise control. Yet if this may be done, the Court's opinion surely does not satisfactorily explain why a local governing body may not enact a far less "intrusive" ordinance such as that of the city of Burbank.

The history of congressional action in this field demonstrates, I believe, an affirmative congressional intent to allow local regulation. But even if it did not go that far, that history surely does not reflect "the clear and manifest purpose of Congress" to prohibit the exercise of "the historic police powers of the States" which our decisions require before a conclusion of implied preemption is reached. Clearly Congress could preempt the field to local regulation if it chose, and very likely the authority conferred on the Administrator of FAA by 49 U.S.C. § 1451 is sufficient to authorize him to promulgate regulations effectively preempting local action. But neither Congress nor the Administrator has chosen to go that route. Until one of them does, the ordinance of the city of Burbank is a valid exercise of its police power.

The District Court found that the Burbank ordinance would impose an undue burden on interstate commerce, and held it invalid under the Commerce Clause for that reason. Neither the Court of Appeals nor this Court's opinion, in view of their determination as to pre-emption, reached that question. The District Court's conclusion appears to be based, at least in part, on a consideration of the effect on interstate commerce that would result if all municipal airports in the country enacted ordinances such as that of Burbank. Since the proper determination of the question turns on an evaluation of the facts of

⁴ The record is not exactly clear on this point, but it does appear to be the case. Although there are several airports owned by municipalities or other governmental units that are located outside of the bound-

aries of the units, there does not appear to be any other privately owned airport, at which certified air carriers operate, in the country.

each case, see, e. g., *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962, 3 L.Ed.2d 1003 (1959), and not on a predicted proliferation of possibilities, the District Court's conclusion is of doubtful validity. The Burbank ordinance did not affect emergency flights, and had the total effect of prohibiting one scheduled commercial flight each week and several additional private flights by corporate executives; such a result can hardly be held to be an unreasonable burden on commerce. Since the Court expresses no opinion on the question, however, I refrain from any further analysis of it.⁶



411 U.S. 747, 30 L.Ed.2d 635
GULF STATES UTILITIES COM-
PANY, Petitioner,
v.
FEDERAL POWER COMMISSION et al.

No. 71-1178.

Argued Dec. 5, 1972.

Decided May 14, 1973.

Proceeding by cities for review of orders of the Federal Power Commission approving applications by electric utilities proposing issuance of bonds for purpose of refunding part of utility's outstanding commercial paper and short-term notes. The Court of Appeals, 147

5 Although cited by the Court, this situation is clearly not a *Cooley* situation, in which the control of aircraft noise "admits" only of one uniform system, or plan of regulation, [which] may justly be said to be of such a nature as to require exclusive legislation by Congress." (*Cooley v. Board of Wardens*, 12 How. 290, 319 (1852)). The court below also held, but by a divided vote, that the Burbank ordinance was invalid because it

U.S.App.D.C. 98, 454 F.2d 941, remanded, and certiorari was granted. The Supreme Court, Mr. Justice Blackmun, held that in application by public utility for authority to issue security, FPC, as a general rule, must consider the anticompetitive consequences of a security issue. The Court also held that FPC's summary rejection of cities' allegations of anticompetitive conduct could not go unexplained.

Affirmed.

Mr. Justice Powell, with whom Mr. Justice Stewart and Mr. Justice Rehnquist joined, filed dissenting opinion.

1. *Electricity* §2

Section of Federal Power Act empowering FPC to authorize issue of security by a public utility only if it finds that such issue is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, requires the FPC to inquire into and to be satisfied with the purposes of the issue and its lawfulness, and even if its "object" is lawful, the necessary inquiry is not ended, for, in addition, the object must be compatible with the public interest. Federal Power Act, § 204(a), 16 U.S.C.A. § 824(a).

2. *Electricity* §2

Fact that allegations of anticompetitive conduct similar to those raised by cities objecting to FPC approval of bond issue by public utility could be made in other proceedings related to interconnections, to dispositions and mergers, to rates and rate-making practices and to

was in conflict with a clearly articulated federal policy, to wit, a non-preference runway preference order of the FAA tower chief at Burbank which requested pilots to use a particular runway at night. The Court does not decide this case on that ground; I see no occasion to express in detail my views on the conflict issue, except to note my doubt as to the correctness of the disposition of that question.

(filed as 93-8-14)

adequacy of service was not determinative of the scope of FPC inquiry under section of the Act empowering FPC to authorize issue only if such issue is for some lawful object, within corporate purposes of the applicant and compatible with the public interest. Federal Power Act, §§ 202, 203, 204, 204(a), (c), 204-206, 16 U.S.C.A. §§ 824a, 824b, 824c(a), (c), 824c-824e.

3. *Electricity* §1

Primary purposes of the Public Utility Act of 1935 were to curb abusive practices of public utility companies by bringing them under effective control, and to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce. Federal Power Act, §§ 204-206, 15 U.S.C.A. §§ 824c-824e.

4. *Electricity* §2

Fact that FPC has broad authority under other provisions of the Federal Power Act to determine whether a public utility's conduct is in the public interest does not mean that the same standard is not equally germane under section providing for approval of bond issue by a public utility. Federal Power Act, § 204, 16 U.S.C.A. § 824c.

5. *Electricity* §2

The Federal Power Act did not render antitrust policy irrelevant to the FPC's regulation of the electric power industry. Federal Power Act, §§ 202-207, 16 U.S.C.A. §§ 824a-824f.

6. *Electricity* §2

Without a more definite indication of contrary legislative purpose, court would not read out of statute empowering FPC to approve issue of securities by a public utility the requirement that FPC consider matters relating to both the broad purposes of the Federal Power Act and fundamental national economic policy expressed in the antitrust laws. Clayton Act, §§ 7, 11(a), 15 U.S.C.A. §§ 18, 21(a); Federal Power Act, § 204, 16 U.S.C.A. § 824a.

7. *Electricity* §2

Under section of Federal Power Act providing for FPC approval of issue of securities by public utility, FPC is required to consider matters relating to both the broad purposes of the Act and fundamental national economic policy expressed in the antitrust laws.

8. *Public Service Commissions* §17

Consideration of antitrust policies in context of statute providing for FPC approval of bond issue by public utility provides a first line of defense against anticompetitive practices that might become the subject of an antitrust proceeding.

9. *Electricity* §2

The FPC, as a general rule, must consider the anticompetitive consequences of a security issue under statute providing for FPC approval of issue of security by a public utility. Federal Power Act, § 204, 16 U.S.C.A. § 824c.

10. *Public Service Commissions* §17

The FPC, like the Interstate Commerce Commission has broad regulatory authority, which includes responsibility for considering antitrust policy in discharging its statutory obligation. Clayton Act, §§ 7, 11(a), 15 U.S.C.A. §§ 18, 21(a).

11. *Electricity* §2

Under section of Federal Power Act providing for FPC approval of issue of security by a public utility, not every allegation of anticompetitive aspects of the issue must be fully investigated regardless of its facial merit, but where the FPC summarily disposes of proffered objections, or where it exercises its discretion to approve an issue without considering its anticompetitive consequences, the reviewing court must closely scrutinize its action in light of the statutory obligation to protect the public interest and to enforce the antitrust laws. Federal Power Act, § 204, 16 U.S.C.A. § 824c.

12. *Electricity* §2

FPC's summary denial of cities' allegations of anticompetitive conduct by

Section 236
Business, Roadside (B.R.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted:

- 236.1 Uses permitted and as limited in the B.M. Zone.
- 236.2 Animal boarding place, Class A [Bill No. 85-1967]
 Animal boarding place, Class B [Bill No. 85-1967]
 Bottling establishment, soft drink
 Brewery, Class 7, if within the urban rural demarcation line [Bill No. 185-1995]
 Greenhouse
 Laboratory
 Motel or motor court
 Printing, lithographing or publishing plant employing over 25 persons
 Volunteer fire company
- 236.3 The following uses when located at least 50 feet from the residential zone boundaries at the ends of the commercially zones frontages: [Resolution, November 21, 1956]
 Building materials storage and sales yard
 Farm implements, sales and service
 Feed and grain sales and storage
 Kennel
 Lumberyard
 Public utility storage yard
 Stone or monument works
 Storage of inflammable liquids and gases underground (see Baltimore County Building Code for requirements)
 Tire retreading or recapping
- 236.4 Special exceptions. The following uses when permitted as special exceptions (Sections 270 and 502):¹⁰
 Airport
 Amusement park
 Arcade, subject to the provisions of Section 423B [Bill No. 29-1982]
 Automotive-service station, subject to the provisions of Section 405 [Bill Nos. 40-1967; 85-1967]¹¹
 Bus terminal
 Car wash [Bill Nos. 108-1964; 85-1967]
 Cemetery (Section 401)
 Contractor's equipment storage yard

¹⁰ Editor's Note: "After-hours club," which originally followed, was repealed by Bill No. 36-2000.

¹¹ Editor's Note: The entry entitled "Boat yard," which originally followed, was omitted from the draft of Bill No. 85-1967 through the copying of an apparently incomplete list of special exceptions as it appeared in a post-1955 edition of the zoning regulations. It is assumed, therefore, that the omission of the entry from the bill as enacted was inadvertent. (No intent regarding the regulation of boat yards is reflected in either the title of the bill or in any record pertaining to the bill.) The words "and/or marine railway" were previously repealed by Bill No. 64-1963.

Section 233
Business, Major (B.M.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted (Section 233.3):

- 233.1. Uses permitted in B.L. Zone.
- 233.2¹
 - Animal boarding place, Class A [Bill No. 85-1967²]
 - Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors³
 - Boatyard [Bill Nos. 64-1963; 85-1967]
 - Bowling alleys
 - Carpentry, electrical, plumbing, heating, sheet metal, electroplating and painting shops
 - Catering hall [Bill No. 110-1993]
 - Clothes cleaning and dyeing where not more than two units with combined capacity of not more than 50 pounds are employed
 - Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area and boat rental [Bill Nos. 64-1963; 85-1967]
 - Commercial recreation enterprises, including dance halls, skating rinks and others which, in the judgment of the Zoning Commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades
 - Community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities [Bill Nos. 64-1963; 85-1967; 26-1988]
 - Funeral establishment [Bill No. 43-1970]
 - Garage, service
 - Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line [Bill Nos. 64-1963; 85-1967]
 - Hotel
 - Machinery sales store
 - Marina [Bill Nos. 64-1963; 85-1967]
 - Nightclub⁴
 - Printing, lithographing or publishing plant, employing not more than 25 persons
 - Secondhand store⁵

¹ Editor's Note: All of the provisions of this subsection that are not followed by bracketed historical references were reenacted without substantive amendment by Bill No. 85-1967. The entries indicated in this section as originally having been added by Bill No. 64-1963 were, according to a literal reading of that bill, to have been added to "[Section]...232.2, title 'B.M. zone'...". However, Section 232.2 regulates side yards, not uses, and is part of the regulations of the B.L. zoning classification, not the B.M. classification.

² Editor's Note: This bill also repealed "Animal hospital," which originally followed.

³ Editor's Note: "Billiard and pool rooms," which followed this item, was repealed by Bill No. 61-1967.

⁴ Editor's Note: "Pawnshop," which originally followed, was repealed by Bill No. 112-1995.

⁵ Editor's Note: "Tavern," which originally followed, was repealed by Bill No. 85-1967.

Section 230
Business, Local (B.L.) Zone
Use Regulations
[BCZR 1955]

The following uses only are permitted (see Section 230.12):

- 230.1 Uses permitted and as limited in the residential zone immediately adjoining, except that animal boarding place, Class A, is permitted only as a special exception and kennel is prohibited. **[Bill No. 85-1967]**
- 230.2 Convalescent home.
- 230.3 Tourist home, boarding or rooming houses.
- 230.4 Fast food, drive-through only restaurant, carry-out restaurant, fast food restaurant, and standard restaurant, tearoom, convenience store and dairy bar, except drive-in restaurant. **[Bill Nos. 40-1967; 110-1993; 86-1994]**
- 230.5 Bank, building and loan association.
- 230.6 Offices and office buildings.
- 230.7 Private colleges, dancing schools, conservatory for music and the arts, dormitories and fraternity and sorority houses. **[Resolution, November 21, 1956; Bill No. 47-1985]**
- 230.8 Business and trade schools.
- 230.9¹
 - Alcoholic beverage package store
 - Amusement devices, subject to the provisions of Section 422 **[Bill No. 29-1982]**
 - Antique shop
 - Arcade, subject to the provisions of Section 423.A **[Bill No. 29-1982]**
 - Automobile accessory shop
 - Automobile parking lot
 - Bakery, but goods baked on the premises must be sold only at retail on the premises
 - Barbershops and beauty shops **[Bill No. 9-1999]**
 - Billiard and pool rooms **[Bill Nos. 61-1967; 85-1967]**
 - Bowling alley **[Resolution, November 21, 1956; Bill Nos. 58-1957; 85-1967]**
 - Camera, photo-supply or film-processing shops or pickup stations (including "drive-by" facilities) **[Bill No. 43-1970]**
 - Candy store, but goods made on the premises must be sold only at retail on the premises
 - Clothing and accessory stores
 - Commercial film production, subject to Section 435 **[Bill No. 57-1990]**
 - Dairy products store
 - Department store
 - Dressmaking and millinery establishments

¹ *Editor's Note: Of the entries which follow, the ones without bracketed historical information were reenacted without substantive amendment by Bill No. 58-1957, and again by Bill No. 9-1999.*

Drugstore
 Dry cleaning establishment, coin-operated, or retail store plant, etc. (as regulated by the Baltimore County Building Code, Baltimore County Fire, Health and Police Regulations) [Bill Nos. 142-1962; 85-1967]
 Dry cleaning pickup station
 Duplicating service business [Bill No. 117-1983]
 Electrical contractors and appliance repair shop [Bill Nos. 58-1957; 85-1967]
 Florist
 Food store
 Fortune-telling establishments [Bill No. 124-1978]
 Fuel service stations in a planned shopping center or drive-in cluster only, subject to Section 405 [Bill No. 172-1993]²
 Furniture and upholstery stores
 Garden center [Bill No. 41-1992]
 Gift shop
 Hand laundry employing not more than five persons
 Hardware store
 Helistop [Bill No. 85-1967]
 Hobby shop
 Household appliance store
 Jewelry store
 Laundromat or self-service laundry
 Laundry-pickup station
 Medical clinic [Bill No. 37-1988]
 Parking lot [Resolution, November 21, 1956; Bill No. 85-1967]
 Pet shop
 Photographic studio
 Picnic grove [Resolution, November 21, 1956; Bill No. 85-1967]
 Public utility service center
 Radio shop
 Radio studio
 Rail passenger stations, subject to Section 434 [Bill No. 91-1990]
 Residential art salon [Bill No. 85-1967]
 Shoe repair shop
 Social clubs and fraternal organizations
 Sporting goods store
 Stationery store
 Swimming pool
 Tailor shop
 Tavern [Bill Nos. 43-1963;³ 85-1967]
 Television shop
 Television studio

² Editor's Note: "Funeral establishments," which followed this item, was repealed by Bill No. 43-1970.

³ Editor's Note: Bill No. 43-1963 erroneously indicates that this entry was listed in this Section in BCZR 1955 and repealed by Bill No. 58-1957. Actually, the entry was originally listed only in Section 233.2; the entry was, however, erroneously deleted from the latter section as printed in the 1957 published edition of the amended zoning regulations.

Aviation Administration to be used for scheduled operations by helicopter carriers certified by the Civil Aeronautics Board. [Bill No. 85-1967]

HELIPORT, TYPE II — Any area of land, water or structural surface which has been authorized by the Maryland Aviation Administration to be used for nonscheduled but regular helicopter operations and which does not serve for major support operations. As used herein, the term "major support operations" means "maintenance other than fueling; cargo loading; or any accessory operations using 2,500 square feet or more of floor area." [Bill No. 85-1967]

HELISTOP — Any area of land, water or structural surface which is located at least 500 feet from any property line, which has been authorized by the Director of Public Safety¹⁵ to be used for helicopter operations, which is not a heliport, and which does not serve for major support operations (see definition for "heliport, Type II"); or any area of land, water or structural surface which is located closer than 500 feet to a property line, which has been authorized by the Director of Public Safety¹⁶ to be used for not more than 15 helicopter operations per month, which is not a heliport, and which does not serve for major support operations. [Bill No. 85-1967]

HEREAFTER — After the effective date of the provision (in which the word occurs). [Bill No. 98-1975]

HOME OCCUPATION — Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, as stated in Section 450.4, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person per dwelling is employed on the premises other than domestic servants or members of the immediate family, and no mechanical equipment, other than computers, printers, fax machines, modems, standard office copy machines and similar office equipment, is used except such as may be used for domestic purposes. A "home occupation" does not include fortune-telling. [Bill Nos. 124-1978; 27-1981; 68-1998]

HOSPITAL — An institution which is licensed as a hospital by the state and which receives inpatients and provides medical, surgical, psychiatric or obstetrical care. This term includes any health-related facilities which are established in connection with a hospital and are located on the same site as the hospital. Such health-related facilities shall include, but not be limited to, diagnostic facilities, rehabilitation centers, laboratories, training facilities, outpatient care facilities, facilities for chronic or convalescent care and elderly housing facilities. [Bill No. 37-1988]¹⁷

HOTEL OR MOTEL — A building or group of buildings containing guest rooms or units, where, for compensation, lodging is provided on a daily, weekly or similar short-

¹⁵ Editor's Note: The office of Director of Public Safety was abolished under Bill No. 72-1968, amending Section 504 and Subdivision 4, Division 3, Article V, inter alia, of the Baltimore County Charter. The Administrative Officer has delegated such authority to the Director of the Department of Permits and Development Management.

¹⁶ Editor's Note: See Editor's Note 15 above.

¹⁷ Editor's Note: Former definitions of "hospital, Class A" and "hospital, Class B" which followed this definition were repealed by Bill No. 100-1970.

ZONING COMMISSIONER'S POLICY MANUAL

SECTION 420.1 HELIPAD CONSTRUCTION AND SAFETY STANDARDS

Each and every location used for helicopter landings in Baltimore County shall meet the following standards: For this purpose a "helipad" shall be a helicopter landing site. These do not govern landings by helicopters in an emergency situation, nor those used by a police or fire department.

- (a) No person may land or take off from any location in Baltimore County without a "helipad permit."
- (b) Every site chosen for use as a helipad shall be located:
 1. in an area that is level and absolutely clear of any objects for a distance of 150 feet by 150 feet;
 2. and centered in the middle of the "clear zone" (Figure 1);
 3. and the "clear zone" shall be free of any loose objects or debris or any other loose material such as dirt, sand, gravel, etc.
- (c) Every helipad shall have two approach/departure paths. The approach/departure paths shall have a minimum of 90 degrees between them (Figure 2). Approach/departure paths shall be chosen on a safety basis; i.e., consideration for populated areas, public location, etc.
- (d) The approach/departure paths shall have a slope free of obstructions at a ratio of 8 to 1 from the edge of the 150 foot "clear area" to extend outward in a direct line of 4000 feet (Figure 3).
- (e) The approach/departure paths shall extend from the "clear zone" for a distance of 4000 feet and shall be 500 feet wide at the 4000 foot mark (Figure 3).
- (f) The helipad shall be constructed of "portland" cement at a 6 inch minimum thickness. A design analysis shall be required when an asphalt or bituminous concrete pavement is proposed. The dimensions of the pad shall be a minimum of 20 feet wide by 20 feet long.

FIGURE #1 Clear Zone

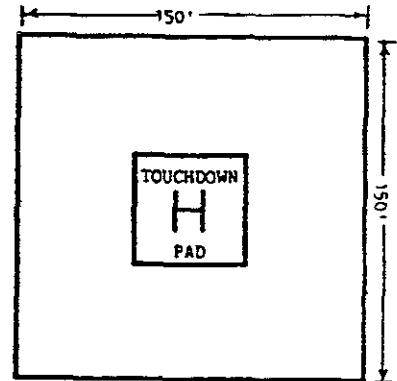


FIGURE #2 Approach - Departure Path Angles

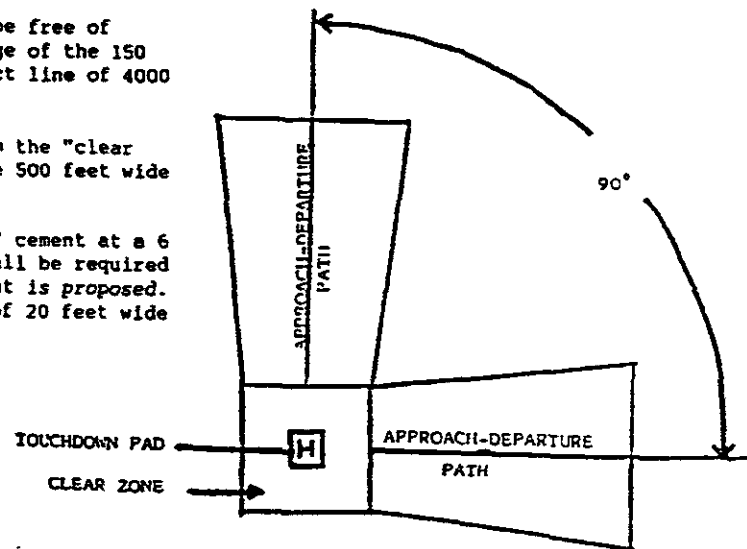
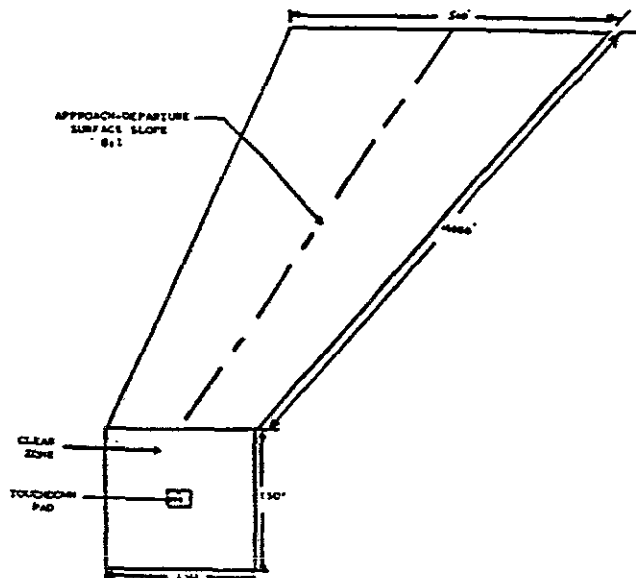
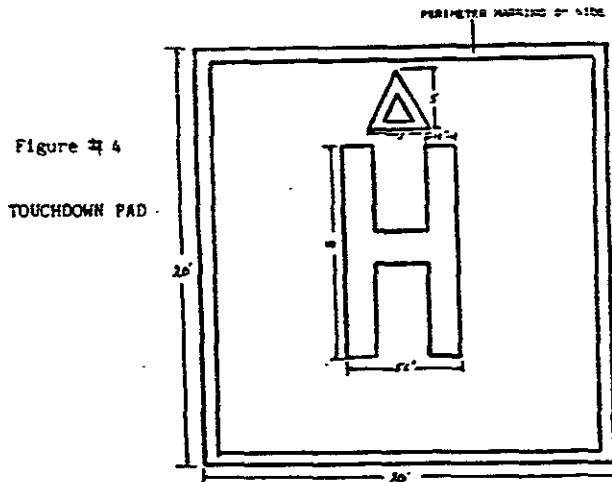


Figure #3
APPROACH-DEPARTURE PATHS



APPROVED MAY 13 1992

- (g) The surface of the helipad shall be brushed or anti-skid.
- (h) A white letter "H" shall be centered on the helipad and be a minimum of 10 feet high and 5 feet, 6 inches wide. The segments of the letter "H" shall be 15 inches wide. A red letter "H" is recommended for hospital helipads (Figure 4).



- (i) Situated above the letter "H" shall be a white triangle or arrow that has the apex pointing magnetic North. The arrow or triangle shall be 3 feet high and 3 feet wide at its base. The triangle or arrow can be segmented (Figure 4).
- (j) The perimeter of the helipad shall be marked with a solid white line 8 inches in width (Figure 4).
- (k) The perimeter of the helipad shall be illuminated by yellow lighting and the touchdown area shall be illuminated by blue lighting, if touchdown lights are installed. The lighting shall be a minimum FAA Standard.
- (l) In the proximity of the helipad shall be located a wind direction indication device. The wind indication device shall be lighted when visibility is diminished due to darkness or weather conditions.
- (m) During landing and departures no person, unless directly involved in flight operations, shall be located on the touchdown pad or within the 150 foot square "clear zone." No vehicles or objects shall be located on the touchdown pad or within the 150 foot square "clear zone" during departures and landings.
- (n) Every person filing a request to build a helipad in Baltimore County shall submit prior to construction a detailed plan showing the location of the helipad, "clear zone," and the approach and departure paths. Included in the plan shall be the location of any occupied structure within the approach/departure paths.
- (o) No permit shall be issued for construction and/or establishment of a helipad prior to a hearing before the Zoning Commissioner for a Special Hearing or a Special Exception, whichever is required. Before permission is granted, at such hearing, every helipad with the FAA would find no objection must also comply with the above requirements. Any such permit when granted shall be issued for one year, subject to annual review by the Zoning Commissioner. The policy department shall have the power to inspect every helipad for compliance with these regulations at any time, and subsequent to any inspection shall file a copy of its findings with the Zoning Commissioner, who will then determine whether further hearings are required.

Ref Ex 4A

AFFIDAVIT OF MICHAEL JOHNSON

1. I, Michael Johnson, am over the age of eighteen, have personal knowledge of, and am competent to testify to, the facts set forth below:

2. I am the owner and operator of the business known as Tony's Seafood and Produce, located at 6619 Baltimore National Pike. My business is located directly next to Antwerpen, Hyundai, formerly known as Fox Hyundai.

3. I have operated my business at that location as a sole proprietorship for approximately five years.

4. My business operates during the hours of 10 a.m. through 6 p.m. on Tuesday through Sunday.

5. I have been present and operating during times a helicopter has landed and taken off at Antwerpen, Hyundai.

6. The landing and taking off of a helicopter from that property does not result in any significant noise, vibration or other interference noticeable from my property. Indeed, it is hardly noticeable at all.

7. I support the application of for a helistop on the property on which Antwerpen, Hyundai operates on Baltimore National Pike.

I SOLEMNLY AFFIRM, under penalties of perjury, that the foregoing statements are true and correct.

5-4-01
Date

Michael Johnson
Michael Johnson

Ref Ex 4B

AFFIDAVIT OF WILLIAM GINSBURG

1. I, William Ginsburg, am over the age of eighteen, have personal knowledge of, and am competent to testify to, the facts set forth below:

2. I am the owner and manager of the business known as Leather Interiors, located at 6630 Baltimore National Pike. My business is located directly across the street from Antwerpen Hyundai and from the proposed helistop on that property.

3. I have operated my business at that location for approximately 8 years.

4. My business operates during the hours of 11 a.m. through 8 p.m. on Monday through Friday, 10 a.m. through 6 p.m. on Saturday and 12 p.m. through 5 p.m. on Sunday.

5. I have been present and operating during times a helicopter has landed and taken off at Antwerpen, Hyundai.

6. The landing and taking off of a helicopter from that property does not result in any significant noise, vibration or other interference noticeable from my property. Indeed, it is hardly noticeable at all.

7. I support the application of for a helistop on the property on which Antwerpen, Hyundai operates on Baltimore National Pike.

I SOLEMNLY AFFIRM, under penalties of perjury, that the foregoing statements are true and correct.

5-11-01

Date

William Ginsburg

William Ginsburg

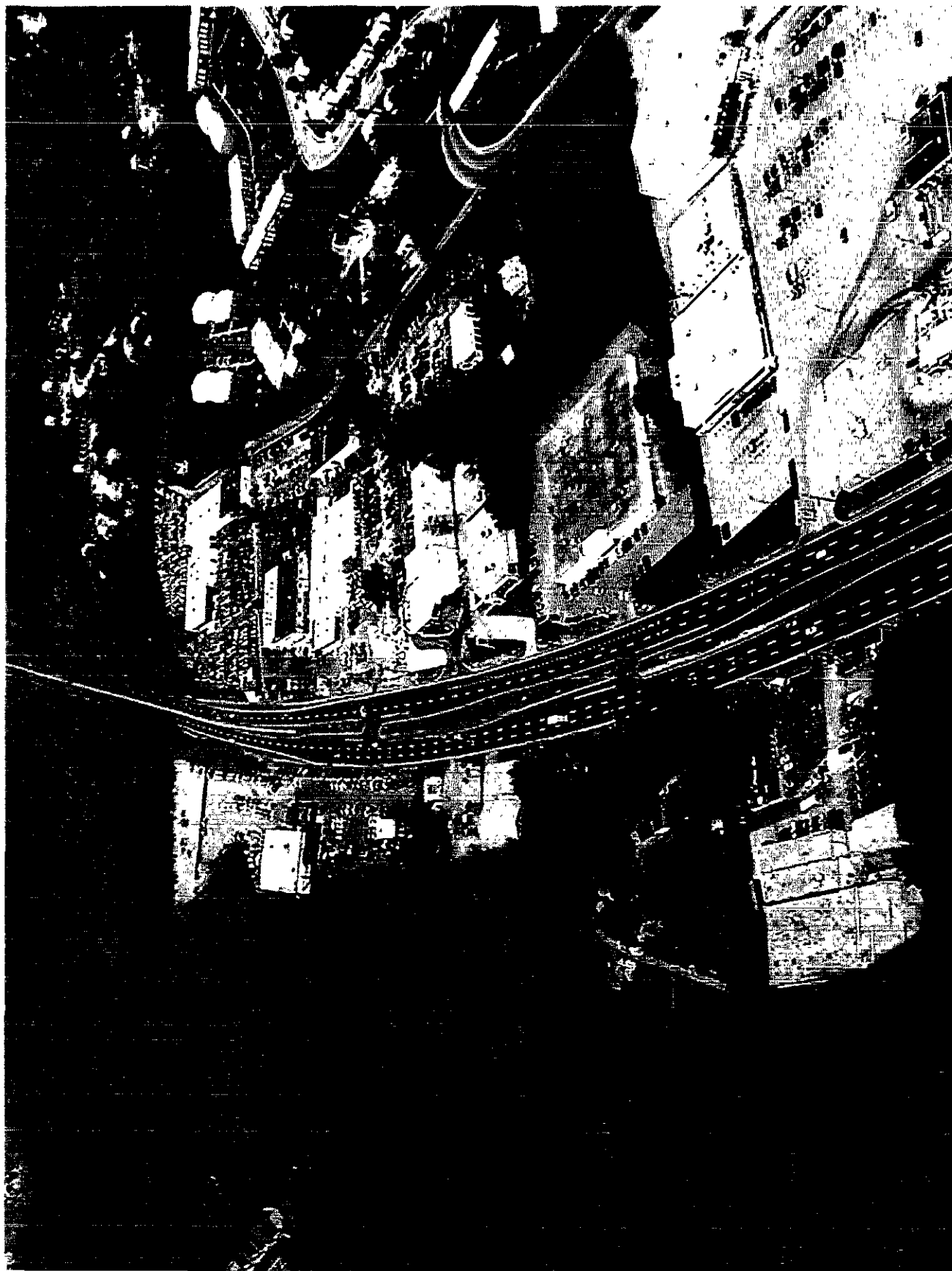
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①



Post 3b

B





Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
1 West Chesapeake Avenue
Baltimore, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No.	Property No.	Zoning
01-0162	01-01-740340	BA-SA

Name(s): H-K REAL ESTATE HOLDINGS INC.
C/O STANFORD HESS

Address: 6631-6635 BALTO. NATIONAL PIKE

Violation Location: SAME

3 DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

101, HELISTOP 102.1 & 36.1 500.4

IMMEDIATELY

CEASE THE OPERATION OF A ILLEGAL

HELISTOP UNTIL A SPECIAL EXCEPTION

IS APPLIED FOR AND FILED WITH ZONING

COMMISSIONER AND MEETS THE RULES

OF PRACTICE AND PROCEDURE

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before:	Date Issued:
01/16/01	01/17/01

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: EO CREED

INSPECTOR: [Signature]

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than	Date Issued:

INSPECTOR: _____

VIOLATION SITE

Per Ex #1

TO THE PERSON(S) CHARGED:

1. It is important that you read this document carefully, as it charges you with a commission of a crime.
2. If you fail to correct the violations noted by the date dictated, you could be penalized by a fine, or imprisonment, or both.
3. A lawyer can give important assistance to you: (a) on how to correct the violations, in order to avoid trial, or (b) at trial, if you failed to correct the violations noted. Assistance can be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information which could affect how you correct the violation(s) cited.
4. You have been ordered to correct the violation(s) cited on the front of this notice by a certain date. Failure to comply with the deadline stated is a misdemeanor. A conviction for each violation subjects you to potential fines of \$200, \$500, or \$1000 per day per violation, depending on the violation, or 90 days imprisonment.
5. It is our responsibility to obtain any required permit(s) to correct the cited violations. All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
6. Upon correction of these violations, contact the inspector for a reinspection. If you have any questions contact the inspector promptly.



Baltimore County
Department of Permits and
Development Management

Code Inspections and
Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmenforce@co.ba.md.us
pdinspect@co.ba.md.us

January 19, 2001

H.K. Real Estate Holdings, Inc.
6631-6635 Baltimore National Pike
Baltimore, MD 21207

Gentlemen:

Post-it® Fax Note	7671	Date	1-19-01	# of pages	1
To	STANFORD	From	THOMPSON		
Ct./Dist	HESS	Co.	THOMPSON		
Phone #		Phone #	410-887-2824		
Fax #	410-869-8194	Fax #	410-887-2824		

RE: Case Number 01-0162, 6631 Baltimore National Pike

Please be advised that after my January 17, 2001 conversation with Stanford D. Hess, Senior Vice-President of Antwerpen Automotive Group, an extension of thirty (30) days will be afforded your corporation to allow them the opportunity to establish an appointment review date with the Bureau of Zoning Review (410-887-3391). At such time, one must be prepared to file a Petition for Special Hearing to permit a helistop in a B.R.-A.S. (Business, Roadside - Automotive Service) zone.

A close examination of the Baltimore County Zoning Regulations (BCZR) will lead one to believe that a helistop is a use allowed as a matter-of-right in a B.R. zone; however, all helistop operations in the County must be authorized by the Director of Public Safety. While this position was abolished in 1968, ultimately, the Administrative Officer for Baltimore County delegated such authority to the Director of the Department of Permits and Development Management. In speaking with Director Arnold Jablon, due to the potential safety issue, such a use would only be permitted provided approval was granted by the Baltimore County Zoning Commissioner via the public hearing process.

If additional questions exist regarding this matter, please contact me at 410-887-8094.

Sincerely,

James H. Thompson
Code Inspections and
Enforcement Supervisor

JHT:scj

c: Inspector Ed Creed

Ref Ex #2

Census 2000 For You, For Baltimore County Census 2000



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on Recycled Paper

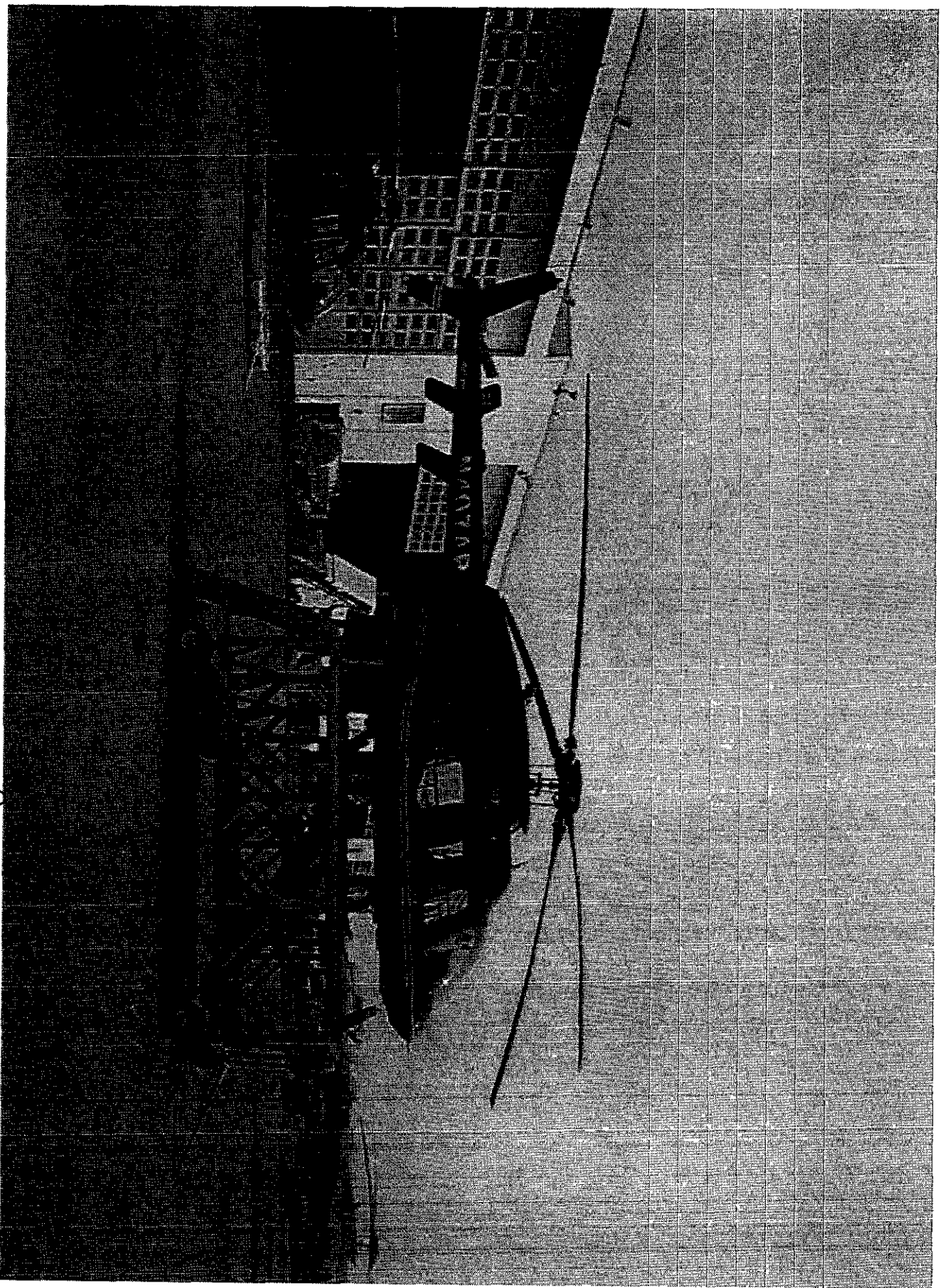
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Come visit the County's Website at www.co.ba.md.us

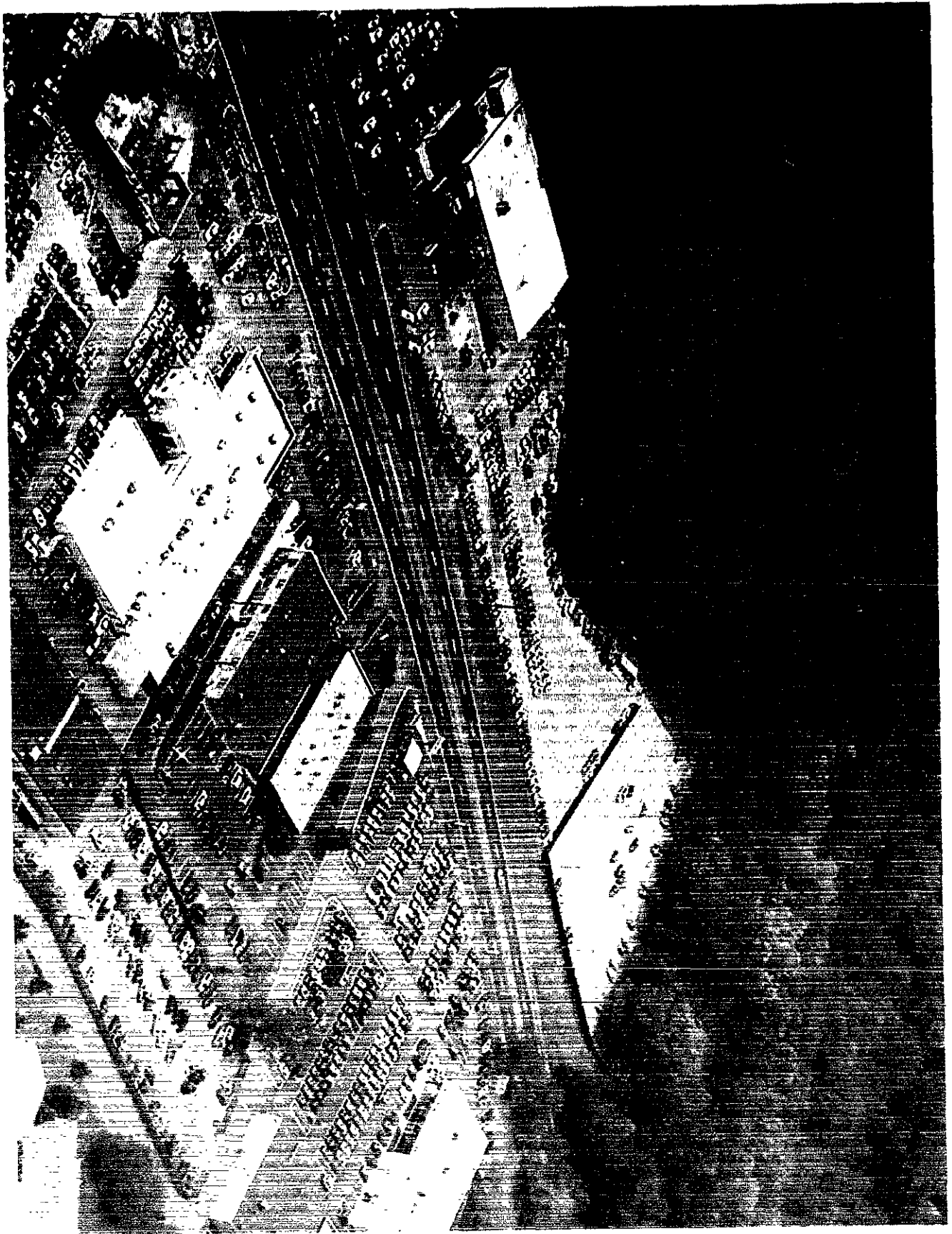
PERMITS DEV MGMT

410-887-2824

01/18/2001 19:30



Ref Ex #10





U.S. Department
of Transportation
Federal Aviation
Administration

Advisory Circular

Subject:

Date: 12/9/83
Initiated by: AEE-110

AC No: 150/5020-2
Change:

NOISE ASSESSMENT GUIDELINES FOR
NEW HELIPORTS

FOREWORD

This circular provides technical guidance for local planners, other government agencies, and operators in calculating the acoustic environment near new heliports. It is intended to provide assistance in preliminary evaluation of the noise compatibility of sites for heliports where none exists. It is not intended for the evaluation of existing heliports or those areas where noise is not an issue.

John E. Wesler
Director of Environment and Energy

Ref Ex #9

12/9/83

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SECTION 1. INTRODUCTION

1. PURPOSE. This circular provides technical guidance for local planners, other government agencies, and operators in calculating the acoustic environment near new heliports. It is intended to provide assistance in preliminary evaluation of the noise compatibility of sites for heliports where none exists. It is not intended for the evaluation of existing heliports or those areas where noise is not an issue (e.g., offshore oil rigs). Further, more detailed environmental analysis may be required under Orders 1050.1D and 5050.4 where there is an FAA action in approving the establishment of the heliport.

2. BACKGROUND. FAA Orders 1050.1D and 5050.4 provide detailed procedures for the environmental assessment of all FAA actions under the National Environmental Policy Act (P.L. 91-190, 42 USC 4321) and a number of other statutes, regulations and orders. However, the private sector and local authorities need standardized methods for preliminary evaluation of potential sites for new heliports. This advisory circular is intended to fill the need and to give "quick-look" capability without the detailed (often computer-based) computations necessary to a full NEPA assessment.

3. OVERVIEW. A two-phase process is suggested to ensure that heliport planning includes effective means for evaluating and minimizing noise impacts.

- The first phase uses estimated noise levels and distances to determine relatively simply whether a proposed facility would meet recommended noise criteria. This analysis can be made using the simplified method (paragraph 16) and the data of Table 1 without the need for detailed measurements.

- The second phase can be used if, based on the earlier estimate, the proposed facility would not clearly meet the recommended noise criteria. Detailed noise readings should then be taken to determine whether the heliport would meet the criteria. This analysis can be accomplished using Table I and either the detailed (paragraph 17) or simplified method, as appropriate.

The applicant should be allowed to participate in the analysis and to modify his proposal as appropriate to meet the criteria. Alternatives for modifying a heliport plan are listed in paragraph 21. After thorough study of these alternatives by all parties involved, reanalyses can be performed based on either estimates or measured data.

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SECTION 2. PLANNING FACTORS

4. GENERAL. The helicopter is typically operated at low altitudes and, as a result, it frequently comes within the audible range of people. Further, helicopters are becoming more widely used in both urban and suburban areas. Therefore, the sound is generated in close proximity to where people live and work. This closeness accentuates the concern associated with the external sound of the helicopter and its acceptability to the communities in which it operates. It is an underlying philosophy of the procedures and recommendations of this guide that each heliport siting is a unique situation. Thus the application of any procedure may not necessarily result in a satisfactory solution for every community and operator. In these regards, individual consideration should be given to such factors as ambient noise, the specific nature of the noise sensitive areas which may be impacted by heliport operations, and seasonal variations in operation.
5. AMBIENT NOISE. People's concerns about aircraft noise are often reflections of the degree to which the aircraft intrudes on existing ambient noise exposure patterns. Ambient noise at a specific location is a composite of sounds from many sources including automobile, truck and bus traffic, motorcycles, construction noise, aircraft, etc. The ambient noise level in an area continually varies with time as the result of varying levels of activity. This activity, and hence the resultant ambient noise, changes with time of day, day of the week and the seasons.
6. SOUND OF HELICOPTERS. The noise footprint of a helicopter during approach, landing, takeoff, and departure is considerably smaller than that of many airplanes. The sound of a helicopter is comparable in level to other sounds that are acceptable to the community. That acceptance is often due to familiarity. Heavy trucks and city buses are examples of sounds which are equivalent in sound level to helicopters. The sound generated by a helicopter, however, is different in character from other forms of transportation. Each mode of flight, takeoff, landing and flyover, can produce different combinations of sound. Often the sound is new to an area. For these reasons, the helicopter is readily identified and may be singled out for complaint.
7. ROUTE PLANNING CONSIDERATIONS. The flight path to and from a proposed heliport should take advantage of low noise sensitivity corridors, i.e., over freeways, and railways, bodies of water, etc. Routes should be selected to avoid noise sensitive facilities such as schools, churches, rest homes, large open-air gatherings of people, etc. Rapid turns as well as other transient maneuvers can give rise to changes in the character and level of the sound. These maneuvers should be avoided whenever practical, particularly near residential areas. The flyover altitude should also be chosen, within reason, to be the highest practicable since doubling the flyover height will decrease the peak sound level heard on the ground by more than 6 decibels. Thus, routes at 1000 to 2000 ft. altitude are preferable to 500 ft. (Advisory Circular 91-36B recommends 2000 ft. minimum altitude over populated areas.) In the past, there has been a tendency for helicopters to operate at low

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altitudes even when there has been no necessity due to safety or Air Traffic Control requirements. The FAA is currently working with a number of cities to designate VFR corridors specifically for helicopters, in order to reduce public impacts. The FAA also supports the helicopter industry's "Fly Neighborly" program to reduce noise effects.

8. ACOUSTICAL CONSIDERATIONS IN SITE SELECTION. The FAA's Heliport Design Guide (AC 150/5390-1B) should be consulted in selecting and developing a heliport site. Where noise impacts are a consideration, it may also be desirable to consider sites in or near high activity areas such as near thoroughfares, freeways, busy streets, railways, etc., since the noise generated by such facilities will tend to mask the sounds generated by the helicopter. Of course, heliports are also compatible in open areas. Except for emergency use, heliports should not be located adjacent to such facilities as schools, churches, and rest homes. Elevated heliports should be considered separately from ground level sites. (See paragraph 19.) Clear zones and helistops on rooftops should be encouraged in recognition of the helicopter's demonstrated rescue and evacuation potential in emergency situations, such as fires.

SECTION 3. CRITERIA SELECTION

9. GENERAL. Outside noise levels have generally proven to be reliable indicators of community response to sound exposure, and most standards use them exclusively. For this reason, the environmental criteria for heliports are based on external sound only. However, in some cases, particularly for sites near schools and hospitals, it may be more appropriate to consider indoor sound levels. In these cases it is not possible to generalize, and each case must be treated on an individual basis.

10. SOUND LEVEL UNITS.

a. Single Event Measure. The Aviation Safety and Noise Abatement Act of 1979 (P.L. 96-193, 49 USC 2101) required that the FAA establish a single system for measuring and evaluating noise impacts. That system, as incorporated in FAR Part 150 and Order 1050.1D, is the family of units based on the "A" weighted sound level. For heliports, the FAA chose the Sound Exposure Level (SEL), which is a single-event measure combining both the events maximum intensity and its duration. A mathematical explanation of this unit is given in FAR Part 150, Appendix A. Values of SEL for various helicopters may be obtained from:

- (1) Measurements using an integrating sound level meter, or
- (2) Listings of sound exposure levels provided by the FAA or helicopter manufacturers.

In either case, the individual values of SEL for each helicopter takeoff, landing and flyover are combined by the methods contained in this Advisory Circular and compared against the community noise levels.

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b. Community Noise Level. So that the relative contributions of the heliport and other sound sources in the community can be compared the FAA recommends the use of a cumulative noise measure, the 24 hour equivalent sound level (EQL). This unit is similar to the day-night average sound level (DNL) specified in FAR Part 150 for evaluating the community noise levels around airports for fixed-wing aircraft. The only difference between EQL and DNL is that DNL adds a 10 dB penalty to night flights between 10:00 p.m. and 7:00 a.m. Helicopter EQL values are obtained by adding logarithmically the single-event SEL values over a 24 hour period.

11. NORMALLY COMPATIBLE SOUND LEVELS.

a. Criteria. Public Law 96-193 (cited above) also directs the FAA to identify land uses which are "normally compatible" with various levels of noise from aircraft operations. Because of the size and complexity of many major hub airports and their operations, FAR Part 150 identifies a large number of land uses and their associated noise levels. However, since the operations of most heliports tend to be much simpler and the impacts more restricted in area, Part 150 does not apply to heliports off the airport property. Instead, for individual heliports the FAA recommends the simpler criteria contained in Table 1. These recommended levels were chosen on the basis of the criteria typically found to be acceptable in areas by type. The community is divided into three basic area categories: "residential", "commercial", and "industrial", with energy equivalent (EQL) noise levels as shown in Table 1.

b. Compatibility. The maximum recommended cumulative sound level (EQL) due to the proposed operations of helicopters at a new site should not exceed the ambient noise level already present in the community at the site of the proposed heliport. This means, the average equivalent helicopter noise level should not exceed the values recommended in Table 1, or the locally measured ambient noise level.

c. Ambients. In cases where it is felt that ambient noise levels significantly differ from those given in the table it is recommended that measurements be made. If the observed ambient for the area around the site exceeds that listed in Table 1, the maximum recommended EQL noise levels should be increased accordingly. See paragraph 20 for suggestions on measurement techniques.

d. Applications. As outlined in paragraphs 7 and 8, the heliport site and related ingress/egress routes should be selected for minimal community noise impact. Examples of this type of route include highways, rail lines, bodies of water, etc. However, it is inevitable that there will be some areas or facilities near the heliport that may be affected by the helicopter operations. These may include single family residences, apartment complexes, condominiums, schools, churches, and rest homes. One or more of these areas or facilities can be identified from maps and plots for use in determining the noise compatibility of the proposed heliport site. Facilities associated with the operation of the proposed heliport itself should not be considered noise sensitive.

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12. NUMBER OF HELICOPTER EVENTS. Using the normally compatible sound level criteria defined above, it is possible to compute the maximum permitted number of helicopter events (takeoffs, landings, and flyovers). The resultant number of events will depend on the magnitude of the sound exposure levels from the individual events, as well as the ambient noise level in the general area. The procedures for determining this number are described in Section 4 below.

13. TECHNICAL ASSISTANCE. Assistance in the use of these procedures may be obtained from the Office of Environment and Energy, AEE-110, telephone (202) 755-9027. Noise data from fifteen helicopter types are provided in "Helicopter Noise Exposure Curves for Use in Environmental Impact Assessment," Report FAA-EE-82-16, AEE-120. Data on additional types of helicopters in a format compatible with the noise calculation procedure (Section 4) may be available from AEE-120, telephone (202) 426-3396, or from the manufacturer. In choosing the data to be employed in any of these analyses, caution should be taken to assure that they are representative of the weights, conditions and operational procedures that may actually be flown at the proposed heliport. Assistance in this area is obtainable from the FAA Region or from the Helicopter Association International (HAI), which has extensive resources and file information on successful heliport operations. This information may be obtained by contacting HAI at 1110 Vermont Avenue, N.W., Washington, D.C. 20005, Attention: Heliport Director. The HAI telephone is (202) 466-2420.

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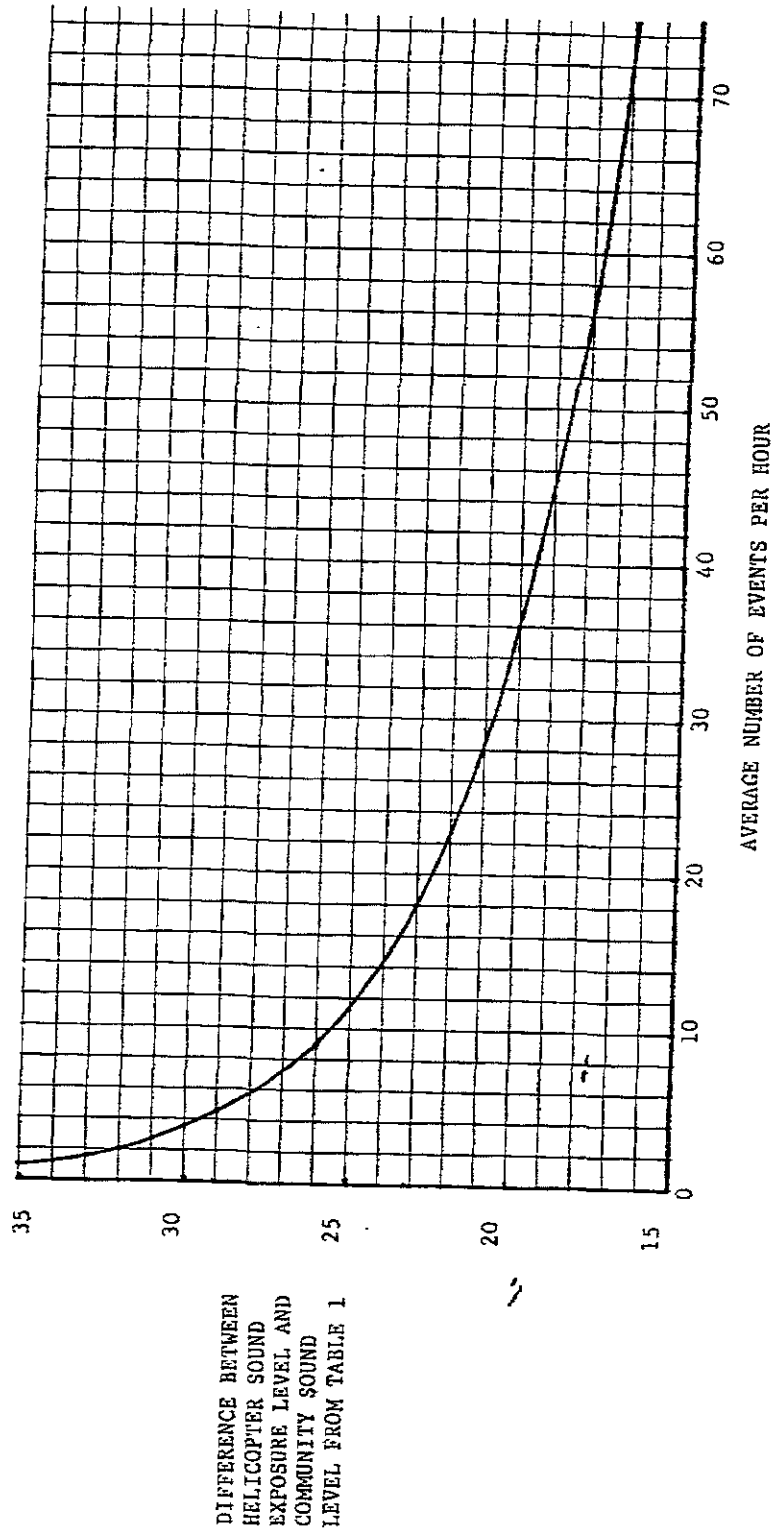


Figure 1. Recommended Maximum Number of Events

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TABLE 1

Normally Compatible Community Sound Levels

TYPE OF AREA	24-HOUR AVERAGE EQUIVALENT NOISE LEVEL (EQL) (A-weighted decibels)
RESIDENTIAL	
SUBURBAN	57
URBAN	67
CITY CENTER	72
COMMERCIAL	72
INDUSTRIAL	77

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SECTION 4. NOISE CALCULATION PROCEDURES

14. GENERAL. The maximum recommended 24-hour average equivalent helicopter noise level is one that equals, but does not exceed, the 24-hour average equivalent ambient sound levels for the community into which the proposed heliport would be introduced. Two procedures are provided for such assessments. The first of these involves a simple analysis which, in most cases, will provide sufficient information, particularly for heliports with relatively few operations. The second, more detailed procedure is intended for those heliports where the first analysis indicates marginal acceptability.

15. SITE/OPERATIONAL INFORMATION. There may be many routes into a heliport site and all of the potential alternatives should be known in advance of the application, and reported. Flight profiles, each of which may be composed of several FAA approved alternatives, should also be described. The heliport evaluation should consider the mix of routes and flight profiles which constitute the normal planned operations. If it is known in advance that noise abatement profiles may be needed for particular routes, they should be included in the application. All proposed routes should be detailed on a land use map of the heliport area. Generally, the following information is required:

- . Location of possible noise sensitive facilities or areas near the heliport site.
- . Routes and flight trajectories to and from the heliport.
- . Helicopter sound level versus distance data from Report FAA-EE-82-16 or the manufacturer.

Designation of noise sensitive areas and facilities is made by municipal officials from a land use survey of the area surrounding the heliport site. If there are several noise sensitive facilities or areas near the same route, each should be evaluated. Facilities directly associated with the heliport are excluded.

16. SIMPLIFIED METHOD.

a. As mentioned in paragraphs 9 and 10, both the helicopter and community ambient sound levels are evaluated using an energy equivalent (averaging) noise metric, EQL. This unit includes the effects of both level and duration of each noise event and the number of events. The simplified method allows a tradeoff between the Sound Exposure Level and the number of events.

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b. Single Helicopter Type and/or Route. Using criteria described above, a recommended maximum number of helicopter events per hour has been developed. It is shown in Figure 1 and listed in Table 2. In determining the hourly average, the daily total number of events is divided by 24. The procedure is as follows:

(1) Determine the closest point of approach of the helicopter for the nearest flight path (takeoff or approach) to the designated noise sensitive area or facility.

(2) Determine the single-event helicopter sound exposure level (SEL) by referring to Report FAA-EE-82-16 or to manufacturers' data (furnished by the applicant) for the slant range of the closest point of approach and the appropriate flight condition. If a relationship between noise and slant range is not included in the furnished data, it may be assumed that sound exposure level decreases as ten times the logarithm of the distance ratio ($10 \log_{10} R/R_0$) which is three dB per doubling of distance.

(3) Subtract the average community equivalent sound level (EQL) value (Table 1) from the sound exposure level (SEL) determined above. Use this value to enter either Figure 1 or Table 2 to find the recommended maximum number of helicopter events. If the proposed number of events is less than or equal to the acceptable number of events and no other type of operation is planned, the heliport meets the recommended noise criteria.

(4) If the analysis indicates marginal acceptability, use of the more detailed method (paragraph 17) may be necessary. A proposal may be considered marginal if the proposed number of events is within ten percent of the recommended maximum.

c. Multiple Routes and/or Helicopters. If there are several routes and/or a mix of helicopters, the sum of the operations can be evaluated for each noise sensitive location as follows:

(1) Using the single route, single helicopter procedure above, determine the recommended maximum number of events affecting each noise sensitive location for each route, direction, and type of helicopter.

(2) For each combination in Step 1, divide the number of proposed events by the recommended maximum number of events. This gives the acceptability ratio for each combination.

(3) Sum the acceptability ratios for all the combinations to obtain the noise loading (L). If the value of L is equal to or less than 1.0, the heliport meets the recommended criteria.

Note: This method is adopted from the current Occupational Safety and Health Administration rule. (Department of Labor Occupational Noise Standard, Code of Federal Regulations, Title 29, Chapter XVII, Part 1910, Subpart G, 36 FR 10466, May 29, 1971.) The determination of sound loading (L) is for one noise sensitive location only. It is to be computed for each location considered noise sensitive. The computed sound loading at each location is independent of the others; they can not be added.

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TABLE 2
RECOMMENDED MAXIMUM NUMBER OF EVENTS

DIFFERENCE BETWEEN HELICOPTER SOUND EXPOSURE LEVEL (1) AND COMMUNITY SOUND LEVEL (EQL)	AVERAGE NUMBER OF EVENTS PER <u>HO</u> UR	AVERAGE NUMBER OF EVENTS PER <u>DAY</u>
17	72	
20	36	
23	18	
26	9 10/hr. Commercial	
29	4.5	
31		64
34		32
37		16 20/day
40		8 Residential
43		4
46		2

(1) When measured data are used, this value is the arithmetic average of approximately 6 events.

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17. DETAILED PROCEDURE.

a. Background. The mathematical formula for the 24-hour average equivalent sound level (EQL) takes several forms, depending upon the sources which are to be energy averaged:

(1) Identical events, such as a single helicopter flown several times a day over the same route -

$$L_{eq} = 10 \log \frac{N \times 10^{L_{AE}/10}}{86,400} \quad (1)$$

where

L_{eq} = average equivalent sound level

N = number of daily helicopter events

L_{AE} = sound exposure level of each helicopter event in decibels A-weighted

86,400 = number of seconds in 24 hours.

(2) Dissimilar events, such as different helicopter types flown over one or more routes or the same helicopter using several procedures or routes -

$$L_{eq} = 10 \log \frac{1}{86,400} (10^{L_{AE1}/10} + 10^{L_{AE2}/10} + \dots) \quad (2)$$

where L_{AE1} , L_{AE2} , etc. are the individual single-event sound exposure levels in decibels.

(3) Combinations of the above, such as several events of different helicopter types or different procedures -

$$L_{eq} = 10 \log \frac{1}{86,400} (N_1 \times 10^{L_{AE1}/10} + N_2 \times 10^{L_{AE2}/10} + \dots) \quad (3)$$

where N_1 , N_2 etc. are the number of single events at sound exposure levels L_{AE1} , L_{AE2} , etc.

b. Methodology. A process similar to that used in the simplified method is used here, except that the appropriate formula from 17(a) is used to compute the average equivalent sound level (EQL). This value of EQL is then compared against the normally compatible sound levels in Table 1. Again, it is recommended that the helicopter average equivalent sound level not exceed the community EQL. An example calculation using the detailed method is shown in Appendix 1.

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18. COMPARISON OF SIMPLIFIED AND DETAILED METHODS. The simplified method uses the normally compatible community sound level from Table 1 or from measurements to determine a recommended maximum for the average number of events per hour. The detailed method computes the helicopter EQL for comparison to the existing community EQL. Both methods use single-event sound exposure level data from Report FAA-EE-82-16 or from measurements.

19. ELEVATED HELIPORTS. In general, elevated heliports, such as those on top of buildings, are evaluated by either method in the same way as grade level heliports. However, care should be taken to use the correct single-event sound exposure levels. The slant range is the direct line-of-sight distance from the noise sensitive location to the heliport atop the building, not the horizontal distance along the ground.

20. SOUND MEASUREMENTS. While an acoustic measurement program can be undertaken to provide all or part of the data used in the assessment procedures of this advisory circular, such programs are often difficult, expensive and time consuming. Therefore, they should be undertaken only after all practical analytical assessments have been made. These assessments should have taken into account the many variables affecting the sound level of the helicopter and the peculiarities of the heliport application. If measurements are still deemed necessary, they should be made in the designated noise sensitive areas using the proposed helicopter route(s), flight profile(s), and model(s). The option of measuring community ambient, energy-averaged, sound levels (EQL) requires 24-hour monitoring over long periods to account for daily, weekly and seasonal variations. This usually requires specialized equipment and often specially-trained personnel. In evaluating helicopter sound levels attributable only to the helicopter, extraneous noise must not influence the data. Guidelines for the measurements are as follows:

a. The integrating sound level meter used for measurements must be calibrated and set to read sound exposure level. The sound level meter used must meet or exceed American National Standards Institute (ANSI) specifications for sound level meters, Standard SL4-1983 or the most recent revision thereto.

b. Personnel performing the measurements must have been trained in use of the equipment and in techniques required to obtain valid sound levels. It is important that the methods of data acquisition are consistent and accurate so that all cases are evaluated on the same basis.

c. Care should be taken to ensure that the helicopter sound data are not contaminated with sound from other sources and that the sound exposure level (SEL) is a true indication of the sound generated by the helicopter alone.

d. Wind speed at the microphone should not exceed 15 knots during the measurement. A windscreen should be used for all outdoor measurements and any sound level corrections necessary to account for windscreen attenuation should be made.

e. The microphone of the sound level meter should be about 4 feet above the ground and at least 25 feet from the nearest building or structure.

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f. The helicopters should use the landing and/or takeoff techniques proposed for use at the heliport.

g. At least six repeat flights are recommended. The data are to be arithmetically averaged to give a mean sound exposure level. (Note: In the case where the pilot has no experience using the proposed heliport site, practice landings and takeoffs should be allowed.)

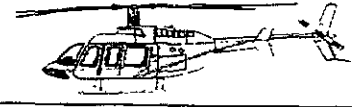
SECTION 5. REMEDIAL ACTIONS

21. ALTERNATIVES. If analyses or measurements indicate the environmental criteria are not met, the heliport applicant may choose to modify the proposal in order to meet them. Such modification may include one or more of the following alternatives:

- a. Selection of different ingress/egress routes.
- b. Adoption of specific noise abatement piloting techniques.
- c. Relocation of the heliport/helipad on the property further away from a noise sensitive facility or area.
- d. Construction of a second heliport/helipad on the site to distribute noise loading between noise sensitive facilities or areas.
- e. Erection of barriers to reduce sound propagated into neighboring areas.
- f. Using existing buildings to shield noise from sensitive areas by relocating the heliport/helipad.

Other modifications to the heliport plan may be possible depending on the particular site, terrain and local conditions. These should be thoroughly studied by all parties involved to arrive at a mutually satisfactory heliport plan. Analyses or measurements should then be repeated with the agreed modifications.

This aspect is of particular importance in the case where noise measurements are made during an initial trial demonstration at the proposed site, since the normal operating techniques used may not take full advantage of the helicopter's operational flexibility to further reduce sound levels.



MODEL 407 EXTERNAL NOISE LEVEL

The Bell 407 is certified as a **Stage 2** helicopter as prescribed in **FAR Part 36, Subpart H**, for gross weights up to and including the certificated maximum takeoff and landing weight of **5000 pounds (2268 Kilograms)**. There are **no operating limitations** to meet the noise level requirements.

The following noise level complies with **FAR Part 36, Appendix J, Stage 2** noise level requirements. It was obtained by analysis of approved noise tests conducted under the provisions of **FAR 36, Amendment 36-20**.

The certificated noise level for the Bell 407 is **85.1 dBA SEL**.

Product Data

1000

FLOOD HAZARD NOTE:

THIS PROPERTY LIES WITHIN AN AREA HAVING A ZONE DESIGNATION OF "C"; AN AREA OF MINIMAL FLOODING AS SHOWN ON PLUM COMMUNITY MAP NO. 24010 DATED MARCH 2, 1981.

ZONING NOTE:

THE ZONING CLASSIFICATION AND THE ZONING DIVISION LINES AS SHOWN HEREON HAVE BEEN TAKEN FROM THE CURRENT BALTIMORE COUNTY COMPREHENSIVE ZONING MAPS AS ADOPTED BY THE COUNTY BOARD ON 5/2/80.

STATE OF MARYLAND
DEPT. OF NATURAL RESOURCES
5000 1806

EXCEPTIONS

COMMITMENT NO. 99-001-139

- CWB Jr. 1019/401 SRC Plat 2705
- CWB Jr. 1146/139
- RRG 4104/576
- 11153/415
- 4181/130
- 30' Roadway

Drainage & slope easements, and use of bed of road (Edmondson Ave. extended) Route 40; shown on plat.
Police Agreement along both sides of Route 40; shown on plat.
Rights of Way for construction and maintenance of utilities to Baltimore County; shown on plat.
Agreement with Consolidated Gas Electric Light and Power Company regarding pole lines along Route 40; shown on plat.
Rights of Way for construction and maintenance of utilities to Baltimore County; shown on plat.
Policy does not guarantee title to so much of the property which may lie in the center of a 30' roadway; shown on plat.

DESCRIPTION OF 6631 BALTIMORE NATIONAL PIKE, FOR CHEVROLET COMPANY, FIRST DISTRICT, BALTIMORE COUNTY, MARYLAND.

Beginning for the same at a point on the southwest side of Edmondson Avenue extended (State Route No. 40) 180 feet wide, as shown on State and County Maps of Maryland Right of Way Plat No. 2705 said point being at the beginning of that parcel of land which by deed dated June 29, 1982 and recorded among the Land Records of Baltimore County in Liber BHK Jr. No. 407, folio 784 was conveyed by Party West Volkswagen, Inc. to Fox Chevrolet, Inc. and running thence and binding on the outline of said land, as now surveyed, and referring to the course of this description to the Baltimore County Grid Meridian south 18 degrees 25 minutes 35 seconds west 223.73 feet to the center line of an Avenue 30 feet wide thence running and binding on the center line of said Avenue and still continuing on the outline of said land and for part of the aforesaid southwest side of Edmondson Avenue extended, Maybory said plat being recorded among the Plat Records of Baltimore County in Plat Book BM No. 82, folio 2 north 88 degrees 24 minutes 53 seconds east 627.20 feet and north 18 degrees 25 minutes 35 seconds east 630.13 feet to intersect the aforesaid southwest side of Edmondson Avenue extended, thence running and binding thereon southeasterly by a curve to the left with a radius of 7714.44 feet the distance of 830.03 feet (the chord of the arc bears south 83 degrees 57 minutes 07 seconds east 629.95 feet) to the place of beginning.

Containing 6.955 acres of land more or less.

Subject to a deed and agreement dated January 23, 1983 and recorded among the Land Records of Baltimore County in Liber BHK Jr. No. 4104, folio 576 being a 10 foot drainage and utility easement as shown on Baltimore County Bureau of Land Acquisition Drawing No. 8002-001-3 & 4.

Subject also to the drainage and slope easements as shown on State Roads Commission Maryland Plat No. 2705 as referred to in a deed dated December 16, 1937 and recorded among the aforesaid Land Records in Liber BHK Jr. No. 1019, folio 401, from T. Lyde Neeson Jr., et al. to State Roads Commission of Maryland.

Subject to the rights for the use of the owners of the land adjoining thereon to the 30 foot wide avenue referred in the above referred to description.

Being that parcel of land which by deed dated June 29, 1982 and recorded among the Land Records of Baltimore County in Liber BHK Jr. No. 4104, folio 576 being a 10 foot drainage and utility easement as shown on Baltimore County Bureau of Land Acquisition Drawing No. 8002-001-3 & 4.

FLOOR AREA RATIO CALCULATIONS

EXISTING FLOOR AREA
ONE STORY GLASS 1440 SRF
METAL BUILDING 22,340 SRF
TOTAL 23,780 SRF
EXISTING SITE AREA: 10,184 SQ. FT.
FAR: 23,780 SF ÷ 10,184 SQ. FT. = 2.34

DESCRIPTION OF 6631 BALTIMORE NATIONAL PIKE, FOR CHEVROLET COMPANY, FIRST DISTRICT, BALTIMORE COUNTY, MARYLAND.

Beginning for the same at the beginning of that parcel of land which by deed dated August 29, 1982 and recorded among the Land Records of Baltimore County in Liber BHK Jr. No. 1101, folio 421 was conveyed by Clara Ruth Lawson, Substituted Personal Representative of the Estate of Clara Catharine Uebel, deceased, to Fox Chevrolet, Inc. said point being in the center of an Avenue 30 ft. wide laid out for the use of the owners of the land adjoining thereon said point being at the northwesternmost corner as shown on a plat of Maybory said plat being recorded among the Plat Records of Baltimore County in Plat Book BM No. 82, folio 2 said point being also in the easternmost outline as shown on a plat of Westchester Section 3 Plat 4 said plat being recorded among the aforesaid Plat Records in Plat Book BHK Jr. No. 38, folio 47 and running thence and binding on the outline of said plat of Westchester and on the first and second line of the land first herein referred to and referring the course of this description to the Baltimore County Grid Meridian, as now surveyed, north 18 degrees 47 minutes 59 seconds east 650.28 feet and north 81 degrees 14 minutes 30 seconds west 139.88 feet thence leaving the plat of Westchester and binding on the third line of the land first herein referred to, as now surveyed, north 19 degrees 16 minutes 29 seconds east 480.16 feet to the southwest side of Baltimore National Pike, 150 feet wide and running thence and binding on the southwest side of Baltimore National Pike, 150 feet wide, southeasterly by a curve to the left with a radius of 7714.44 feet the distance of 450.82 feet (the chord of the arc bears south 49 degrees 58 minutes 22 seconds east 450.46 feet) to the beginning of the fifth line, as now surveyed, south 18 degrees 25 minutes 35 seconds east 630.13 feet to the center line of the thirty foot road herein referred to and to the beginning of the line of the land first herein referred to and running thence and binding on said sixth line and on the centerline of said 30 foot road, as now surveyed, north 88 degrees 24 minutes 53 seconds west 434.17 feet to the place of beginning.

Containing 6.319 acres of land more or less.
Subject to a deed and agreement dated July 25, 1983 between Clara C. Uebel and George T. Uebel and Baltimore County Maryland and being a 10 foot drainage and utility easement and a 15 foot drainage and utility easement as shown on Baltimore County Bureau of Land Acquisition Drawing No. 8002-001-4.

Subject to the rights for the use of the owners of the land adjoining thereon to the thirty foot wide avenue referred to in the above referred to description.
Being that parcel of land which by deed dated August 29, 1982 and recorded among the Land Records of Baltimore County in Liber BHK Jr. No. 1101, folio 421 was conveyed by Clara Ruth Lawson, Substituted Personal Representative of the Estate of Clara Catharine Uebel, deceased, to Fox Chevrolet, Inc.

ZONING CASE HISTORY

CASE NO. 73-05A - A VARIANCE FROM SECTION 880.4 TO PERMIT STORAGE AND DISPLAY OF VEHICLES WITHIN 5' OF PROPERTY LINE INSTEAD OF THE REQUIRED 35' AND SECTION 898.1 TO PERMIT A FRONT YARD OF 40 FEET IN LIEU OF THE REQUIRED 50 FEET WAS GRANTED OCTOBER 29, 1972.

CASE NO. 72-50D - A VARIANCE REQUESTING RELIEF FROM SECTION 410.2 (F) OF THE CODE TO PERMIT THREE (3) IDENTIFICATION SIGNS AT 670.5 FEET IN LIEU OF THE PERMITTED 100 FEET AND SECTION 415.5(A) OF THE CODE TO PERMIT A HEIGHT FOR SIGN 1 OF 80 FEET AND A HEIGHT OF SIGN 2 OF 50.10 FEET IN LIEU OF THE REQUIRED 65 FEET FOR EACH WAS GRANTED SEPTEMBER 29, 1992.

ZONING REQUEST

A ZONING PETITION FOR SPECIAL HEARING TO ALLOW FOR THE USE OF A RESTAURANT REQUIRING NOT MORE THAN 15 OPERATIONS A MONTH



Dec. 7A

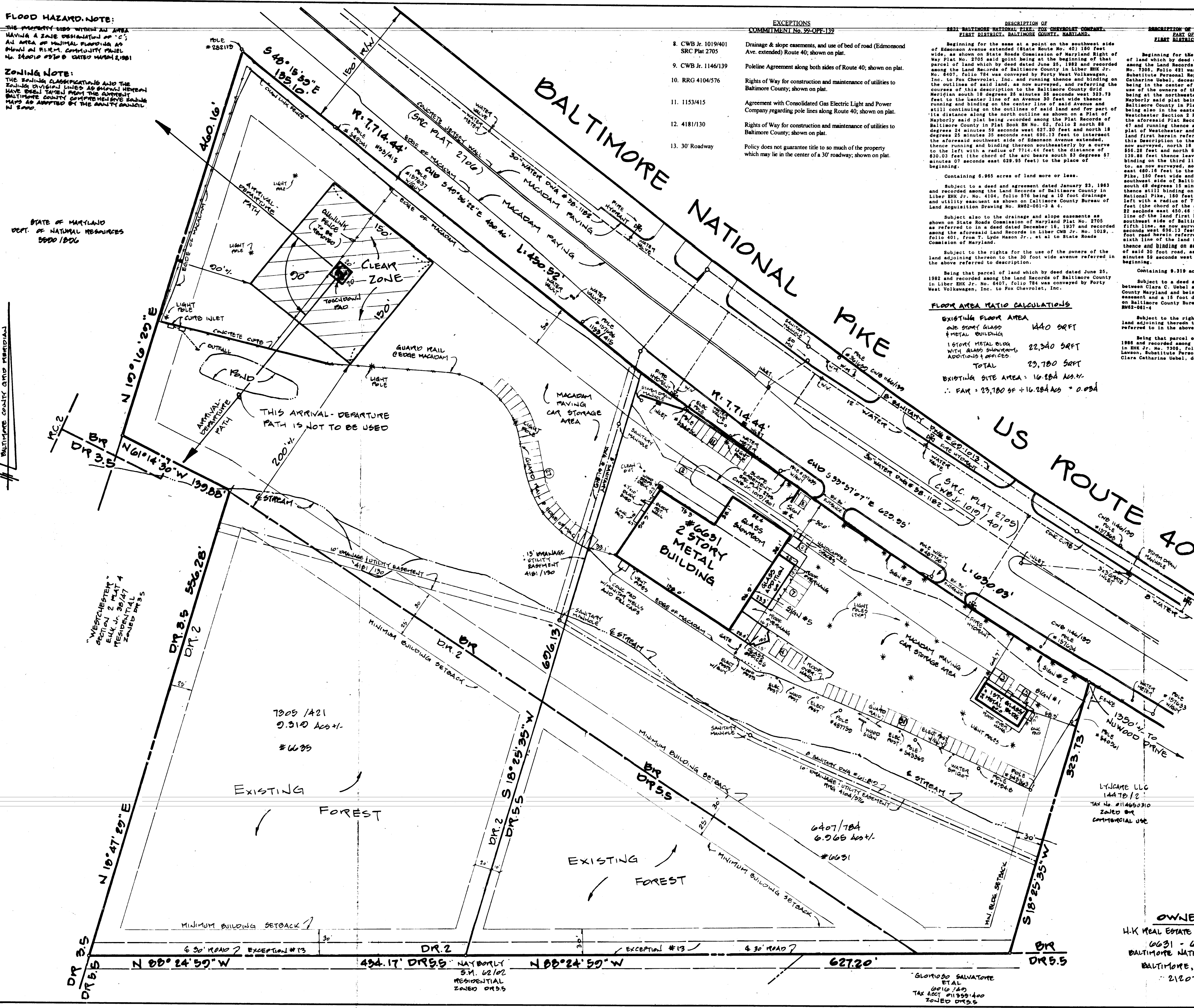
REVISIONS		
NO.	DATE	DESCRIPTION
1	2/10/01	REV. PER FIELD SURVEY UPDATES
2	3/16/01	REV. PER FIELD SURVEY UPDATES

SPELLMAN, LARSON & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
SUITE 406, JEFFERSON BLDG., TOWSON, MD 21204
PHONE: 823-3535

PLAT TO ACCOMPANY
PETITION FOR SPECIAL HEARING
6631/6635 BALTIMORE NATIONAL PIKE

OWNER
H.K. REAL ESTATE HOLDINGS INC.
6631 - 6635
BALTIMORE NATIONAL PIKE
BALTIMORE, MARYLAND
21207

ELECTION DISTRICT 01	BALTIMORE COUNTY, MD
SCALE: 1"=50'	DES. BY: DRN. BY: M.M.N.
DATE: 2/10/01	SHT. 1 OF 2
	221010



PARKING DATA

EXISTING

slow/room 2920 GF @ 5MER/1000 = 15

PARTS 50025 @ 5 PER/1000 30

040P AREA AND

POSED

039

JENVILLE BARRS

REVISIONS	
DATE	DESCRIPTION

[illegible]

SPELLMAN. LABSO

ASSOCIATES INC

SUITE 406, JEFFERSON BLDG., TOWSON, MD 21204
PHONE: 303-333-3333

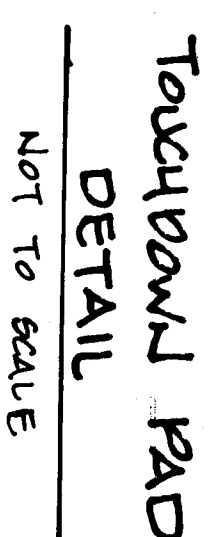
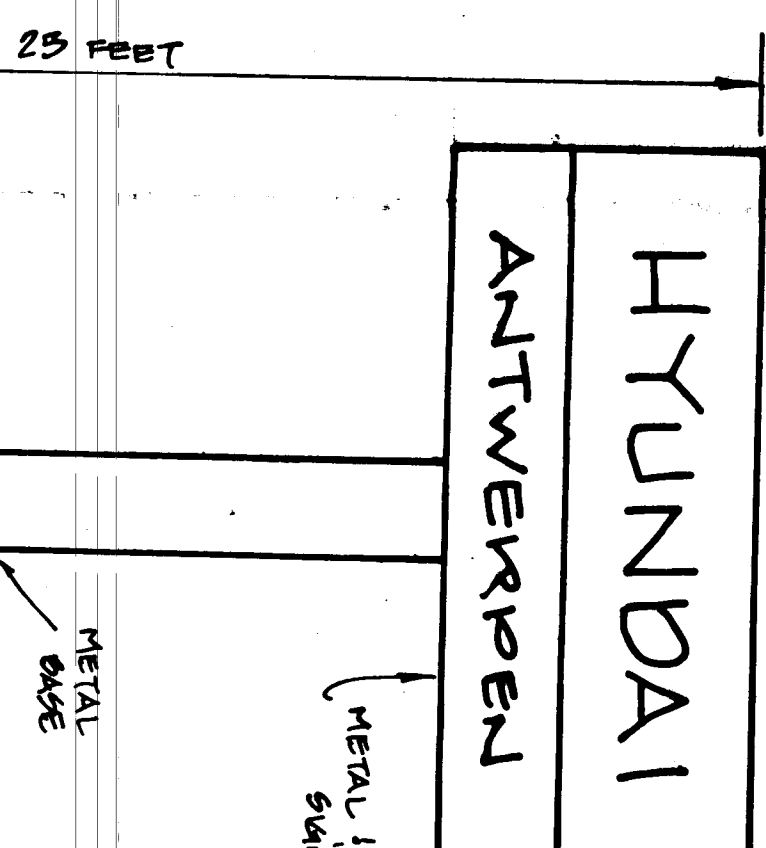
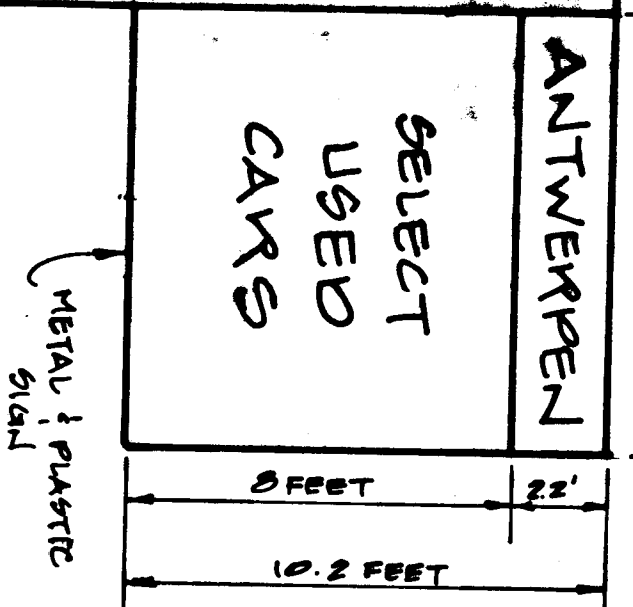
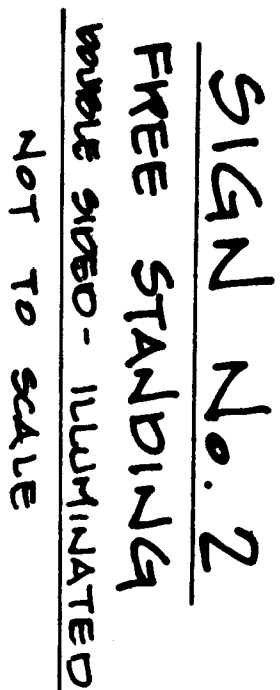
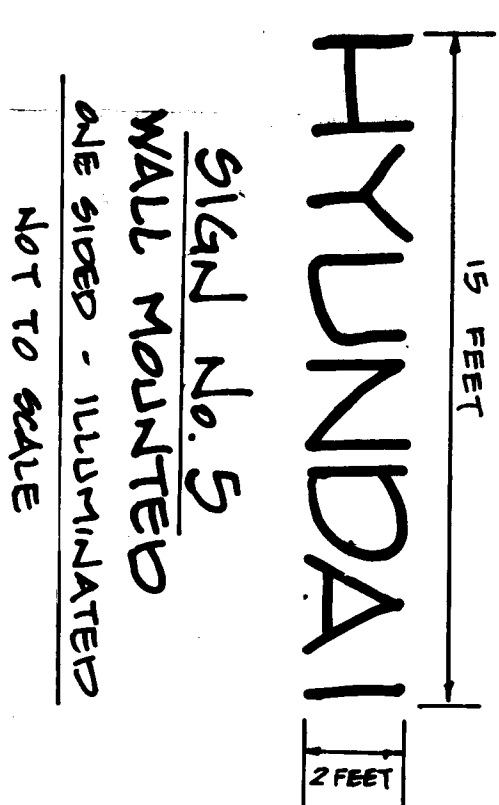
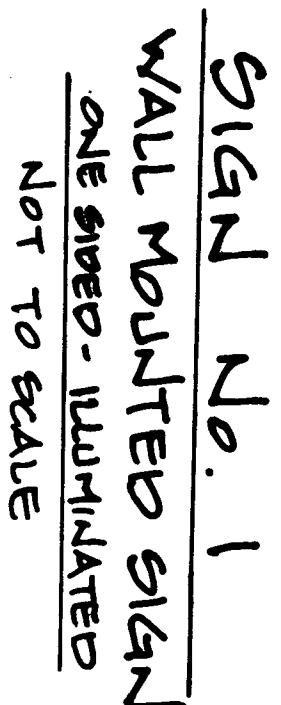
PLAT TO ACCOMPANY

316/35 BAITA

NATIONAL PINE

1

100



THE HEURTOR AS SHOWD HEREON SHALL CONFORM IN ALL INSTANCES TO THE "HELMAPAD CONSTRUCTION AND SAFETY STANDARDS" AS CONTAINED IN SECTION 420.1 OF THE ZONING COMMISSIONERS POLICY MANUAL.

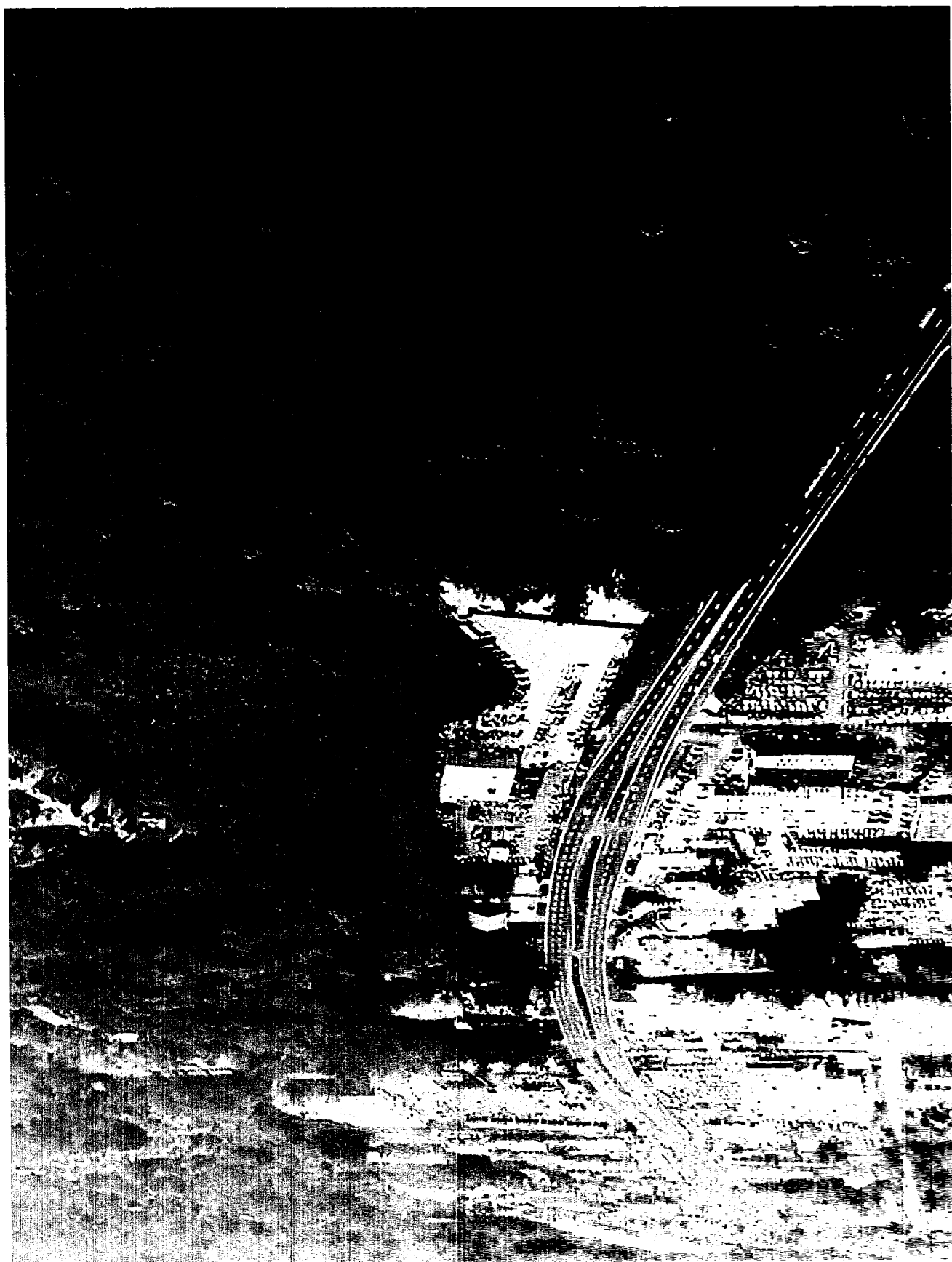
OUTSIDE	92
SERVICE BATS	22
TOTAL PROVIDED	114

SPELLMAN, LARSO & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
SUITE 406, JEFFERSON BLDG., TOWSON, MD 21204
PHONE: 823-3535

PLAT TO ACCOMPANY
PETITION FOR SPECIAL HEARING
66631; 66635 BALTIMORE
NATIONAL PINE

Selection District 01 Valuation \$0

SCALE	AS SHOWN	DES. BY		SHT. 1
DATE	3/18/01	DRAWN BY	PM	



161 Ex 3C

65