

Receipt number AUSFCC-5641115

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

KANDI ARNHOLD & DAVID ZIMMERMAN,  
JENEAN BOGGS,  
STEVEN & HARRIET BORTON,  
WARREN & CHERYL CAVENESS,  
SUE CORLISS,  
PAUL FIRSTAHL & TERESA LIGTENBERG,  
NANCY & ED FOX,  
MARK & APRILE GAUDINIER,  
CATHIE HARRISON,  
MONTE S. HULL & GARY L. HULL,  
THOMAS & HEIDE ISLAND,  
JOHN & VICTORIA KINGSTON,  
JUDY LEWIS,  
PAUL & MARGARET MCDOWELL,  
BARBARA NICHOLS,  
EVELYN NOVAK,  
ROBERT PEETZ,  
MARGE PLECKI & MICHAEL KING,  
BRADLEY PORTIN & MARK WICKS,  
WILLIAM & PAMELA SCHROEDER,  
LAUREL SEYMOUR,  
BONNIE SHAW,  
REBECCA WOOD, and  
MELVIN & JANET ZYLSTRA

For Themselves and as Representatives  
of a Class of Similarly Situated Persons,

*Plaintiffs,*

v.

THE UNITED STATES,

*Defendant.*

No. 19-1407 L

Judge: \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR JUST COMPENSATION**

1. This is a suit under the Fifth Amendment by the owners of more than 30 properties located near a tiny landing strip known as Outlying Field Coupeville (“OLF Coupeville”). The Complaint alleges a physical taking without just compensation of Plaintiffs’ homes and real property by reason of the Navy’s recent, nearly 400 percent increase in Field Carrier Landing Practice (“FCLP”) operations at the airfield. The taking occurred in early 2019, when the Navy began to implement its decision to ramp up operations out of OLF Coupeville that will ultimately result in 24,100 annual flights circling these neighborhoods at low altitudes every year. The operational increase was approved when the Navy issued a final Record of Decision to significantly expand its operations out of the Naval Air Station Whidbey Island and OLF Coupeville on March 12, 2019. Since then, the Navy has started incessantly flying EA-18G Growler aircrafts out of NAS Whidbey Island, including the practice of touch-and-go landings at OLF Coupeville, endangering residents and depriving those closest to the airstrip of the complete value of their homes and properties. The high and unhealthful levels of noise and vibrations associated with the Navy’s new flight operations, coupled with the danger of living in and near areas that the Navy itself has identified as unsuitable for residential use in light of the danger of a deadly jet crash, has deprived Plaintiffs of the use and enjoyment of their property, a Fifth Amendment taking for which they have received no just compensation. Accordingly, plaintiffs seek by this lawsuit just compensation for the taking.

**THE PARTIES**

2. Plaintiffs owned homes and real property, as of March 12, 2019, in or near the Admiral’s Cove neighborhood outside of Coupeville, Washington and in other areas immediately surrounding OLF Coupeville on Whidbey Island. The Admiral’s Cove neighborhood is located less than 5,000 feet from the end of the runway at OLF Coupeville and lies just beneath the final

approach or initial takeoff path. Jets approaching the OLF fly at very low altitude directly over the neighborhood when performing FCLP training, invading the properties with noise and vibration, sometimes into the late hours of the night, and imposing a very real danger of a jet accident.

3. Plaintiffs bring this claim individually on their own behalf, and on behalf of the thousands of Whidbey Island property owners who are similarly situated. Specifically, the named plaintiffs are as follows:

4. Kandi Arnhold is a 55-year-old woman who runs a consulting business that supports mental health therapists out of her home at 1256 Halsey Drive in Admiral's Cove. She purchased her home with her dear friend David Zimmerman just over a year ago in May 2018 when Mr. Zimmerman was diagnosed with multiple sclerosis. Following that devastating diagnosis, he expressed a desire to live in a peaceful area. Coupeville fit the bill. When Ms. Arnhold bid on the home on Halsey Drive, there was lots of competition. But Ms. Arnhold had no idea that the jets would fly directly over her home or that the jets would be as noisy as they are. Had she known the impact of the new operations at OLF Coupeville on her ability to enjoy her property, Ms. Arnhold would have considered buying a different home. Ever since the new jet traffic started to become a reality this spring, Ms. Arnhold's ability to work from home has been impaired. The sound of the war planes flying as low as 200 feet directly over her home on a 60 to 90 second cycle makes focusing impossible. Ms. Arnhold has had clients consider not using her services since they are unable to speak with her due to the noise when the jets are flying. Ms. Arnhold has also suffered increased anxiety and sleep deprivation since the new Growler plan commenced, particularly when the jets fly at night into the early hours of the morning. This loss of sleep has affected her business, her health, and her relationships. Beyond the work-related disruptions, Ms. Arnhold has been deprived of the general enjoyment and use of her property since

she cannot walk her dogs, garden, or even be outside when the Growlers are circling overhead. She is concerned about the health of her dogs who cower when the planes fly and are constantly stressed and shaking. She does not believe that she would even be able to sell her home and move, which she wants to do, as a result of the constant overhead flights.

5. Jenean Boggs resides at 1289 Russell Drive in Admiral's Cove. She purchased her home in July 2017 due to affordability and location close to her workplace. When Ms. Boggs purchased her home, she had no idea that the Navy would dramatically increase the flights out of the OLF, placing her home in an Accident Potential Zone. Now that the Navy has commenced their new operations out of the OLF, she finds that she is unable to entertain guests or have visitors since trying to hold conversations while outside (or even inside) is unbearable when the planes are passing. The flights also require Ms. Boggs to keep her windows closed even when it is hot outside in an attempt to muffle the noise, which makes her home muggy and uncomfortable. Worse yet, the classification of her home within an Accident Potential Zone makes her fear that she has lost the value of her home and also makes her fear increased insurance costs. She is also very worried about the risk of a crash.

6. Steven and Harriet ("Heidi") Borton live at 611 Indian Hill Road in Coupeville near the OLF. They purchased the property in June 2013 and it is their primary residence. With the new frequency of flights in and out of the OLF, flights now pass directly over the Borton home approximately four days a week and often in both the afternoon and evening. These flights cause the Bortons to retreat inside and frantically call their cat in. They find themselves unable to entertain or plan social events with neighbors and friends since the flight schedule is not known very far in advance and it is impossible to talk over the jet noise. They also cannot watch TV or listen to music inside when the planes fly. They, too, have suffered from sleep deprivation as a

result of the night flights and have been woken from sleep by the noise. Heidi Borton has also suffered anxiety as a result of the flights and fears that one of the planes is going to crash into the family home. She has consulted her primary care provider about depression and anxiety that she believes is related to the flights. Worst of all, the Bortons no longer enjoy where they live and talk about how all they want is to “escape.” Of course, the jets have made escape impossible as well since the Bortons are seniors on a fixed income and are now unable to sell their home since the jet traffic has destroyed their property value.

7. Warren and Cheryl Caveness reside at 1143 Nimitz Drive in Admiral’s Cove, where they have lived since 2011. Since the Navy instituted the new Growler plan, the Cavenesses have had to replace seven of their windows that lost their seal from the jet vibrations. They have also noted many cracks that have recently emerged in their walls, which the Cavenesses have painted over. The Cavenesses report that when the jets are flying, they cannot have conversations, watch television, or have family barbeques. Cheryl’s elderly parents also live at the home and neither one of them can sleep when the planes are flying. Cheryl’s mother specifically gets anxious and nervous with the noise and vibrations that intrude her bedroom. Everyone at the home must put in ear plugs and then ear silence head gear over the ear plugs. Still, everyone is losing sleep due to the loud sound of the jets and intrusion and discomfort from the ear plugs and head gear.

8. Susan Corliss lives at 1390 Admiral’s Drive. She finds the noise unbearable and complains that she is unable to watch television, listen to music, or have a conversation when the planes are flying. Subtitles are needed on the television even with headphones. It is also incredibly hot in Ms. Corliss’s home since the family is unable to go outside or open doors and windows to cool the home due to the noise from the planes. Her social life has also suffered since friends no longer want to come over during the week out of fear that the jets will fly. Framed artwork on the

walls constantly is jilted and knocked out of place due to the planes and Ms. Corliss is concerned about the structural stability of her home as a result of the constant vibrations. She cannot distinguish between a low level earthquake and the trembling caused by the jets. Ms. Corliss also fears for her safety and notes that her daughter, who was previously diagnosed with an anxiety disorder, found instant relief when she briefly moved off of the Island. But, since moving back into the family home, particularly now that the new jet plan is underway, her anxiety has returned and is particularly bad when the jets fly. The fear of having a jet accident in the neighborhood is heightened by the amount of flight activity and the designation of the area as an Accident Potential Zone in the Environmental Impact Statement. Ms. Corliss says that all she can think about when the jets fly, which is often Monday through Friday from periods between 10:30 am to midnight, is the risk of a fatal accident. This feeling is also exacerbated by the lack of sleep caused by the jets and the necessary (but not always possible) employment changes that have needed to be made as a result of the flights.

9. Paul Firnstahl and his wife are retirees living at 1227 Admiral's Drive in the Admiral's Cove neighborhood just through the trees from the end of the runway at the OLF. Mr. Firnstahl and his wife purchased the property in 2007 and have peacefully lived in the neighborhood for years. Mr. Firnstahl is a Vietnam Veteran and a proud supporter of the military. However, he cannot support this flight increase, which he believes has destroyed his neighborhood and is threatening community health. Mr. Firnstahl himself is on 60% disability due to Post-Traumatic Stress Disorder incurred as a result of his military service. The start of the Growler plan resulting in frequent overflights has increased his PTSD symptoms, triggered nightmares, and has interfered with the use of his CPAP machine at night, which is required to help Mr. Firnstahl breath. Mr. Firnstahl is also unable to sleep when the jets are flying at night due to the noise since

the jets fly low over his house at what he estimates to be close to 100 feet. He is anxious and concerned that the inexperienced pilots who are training at the OLF will crash into his home. The new flight traffic has made Mr. Firnstahl unable to go outside during large swaths of time, depriving him of working on his deck and enjoying his prized 1931 Crown Victoria. He feels like a prisoner trapped inside his own home.

10. Nancy Fox and her son Edward Fox live at 166 Fletcher Place in Admiral's Cove. The Fox family purchased the home in January 2005 and has lived there ever since. The Fox family is concerned because a significant percentage of their wealth is invested in their property and the value of that property has been effectively reduced to nothing based on the new Growler traffic. The Foxes have also been unable to enjoy their residence since they have found it impossible to have conversations during the flight operations and yelling over the noise has caused headaches and anxiety. But the thing that has most bothered the Fox family is that Nancy's great-grandchildren can no longer come for overnight visits since the low-flying jets scare them. The great-grandchildren, who have 7:30 PM bedtimes, also cannot sleep when the jets fly through the night. The Fox family likewise reports being unable to watch television, read, or concentrate during the overflights and will no longer invite friends over for dinner because they do not know far enough in advance when the avalanche of noise will crash down.

11. Mark and Aprile Gaudinier live at 1225 Byrd Drive in Admiral's Cove. Mr. Gaudinier complains that the increased noise from the planes is so intense that it has not allowed the couple to use their deck at all this summer. Mr. Gaudinier believes his hearing has been affected from the constant noise. The Gaudiniers also believe that their sleep has been significantly affected since they cannot sleep when the jets are flying. They are concerned because the value of their property, which is their major asset, has been reduced exponentially due to the Growler flights.

Importantly, Mr. Gaudinier participated in a prior lawsuit against the Navy that expressly did *not* grant the Government an avigation easement that would cover the Growler flights. Mr. Gaudinier believes that the Government is in violation of the previous settlement agreement he has with the United States and has sent a letter to former opposing counsel David W. Spohr, the attorney who previously served as the authorized representative of the United States during the past lawsuit, notifying him of the Navy's violation of the prior agreement.

12. Cathie Harrison lives at 1260 Farragut Drive in Admiral's Cove. She purchased the property in January 1998 and has lived there ever since. Ever since the Navy commenced its new flight plan out of OLF Coupeville, Ms. Harrison has been unable to regularly watch television, listen to music, talk on the phone, or conduct business. She was also recently diagnosed with a devastating illness and has found that the jet overflights have interfered with her ability to effectively coordinate her care. Ms. Harrison has also found that the jets interrupt her sleep after 11 PM, which has harmed her ability to feel rested and healthy. She likewise is unable to use her deck and enjoy friends and family when the planes fly.

13. Monte and Janet Hull reside at 1282 Farragut Drive in Admiral's Cove, which previously was the home of Monte's parents Richard and Charlotte Hull since 1979. The property is now owned by brothers Monte Hull and Gary Hull. The Hulls report deafening noise and strong smelling jet exhaust fumes with each passing jet, making activities in or outside the home unbearable. Janet leaves the property as soon as the jets fly and doesn't return until they stop, often sitting in her car reading in parking lots until midnight. Worse yet, Janet Hull—who started as an Emergency Room Nurse on Whidbey Island in February after moving from Philadelphia to the Island—resigned from her job (a job she excelled at and loved for forty years) in late-May. She resigned in part because the lack of sleep caused by the Growlers' night operations made work too

stressful. Still, when the jets fly, she leaves to take refuge from the noise wherever she can. Having to rush out of her home for so many hours per week has certainly deprived her of the enjoyment and use of her family's property.

14. Thomas and Heide Island own a home at 111 Keystone Avenue in the Admiral's Cove community where they currently live full time. They purchased the property in July 2018 just before the commencement of new Growler activity out of OLF Coupeville. Since the new Growler operations began, the Islands' home has experienced extreme vibrations that have caused metal window frames to loosen and fall apart. In fact, just months after the start of the new overflights, the Islands had to replace all windows in the house. They also have replaced their entry way doors, have retrofitted their attic with spray foam insulation, and have installed one-inch foam board and new siding on their home—all to try and muffle the noise from the planes. These repairs have cost the Island family more than \$50,000. Akin to their neighbors, the Island family also has been unable to use the outside spaces of their property during the flights due to the noise and vibrations, which cause migraine headaches, and friends and family no longer come over to visit as a result of the new Growler flights. The family likewise finds sleeping during the flights to be impossible.

15. Judy Lewis resides at 1259 Farragut Drive in Admiral's Cove. Since the start of the new Growler jet plan, she reports that she is unable to enjoy the comforts of her own home. Specifically, when the planes are flying she reports that she is unable to talk on the phone, unable to hear conversations, unable to be outside, and unable to sleep.

16. Michael King and Marge Plecki own a home at 1272 Byrd Drive in Admiral's Cove. They also own three other vacant lots on Byrd Drive, including lots at 1280 Byrd Drive, at 1284 Byrd Drive, and at 1290 Byrd Drive. They have been trying to sell two of the lots—at 1284 Byrd

Dr. and 1290 Byrd Dr. respectively—since late 2018. However, they have not had a single offer on either of the lots even though other lots of similar size and type (flat, lakefront lots) further away from the OLF have sold on Whidbey Island. They believe the uncertainty surrounding their neighborhood as a result of the new Growler jet plan has eliminated the market of potential buyers. Selling these lots is an important component of the couple’s financial plan for their retirement. The couple reports that their house and windows shake and rattle every time a Growler flies over. Their relatively new home, which was built in 2002, has also suffered some cracks in the interior walls and two bay windows have lost their seals, letting condensation in. They believe this damage, which largely occurred in the part of the home that is cantilevered over the foundation, is due to increased vibrations caused by the Growler overflights. The couple has also had their lifestyles impacted by the jets. Planes fly over at an elevation of 200 to 250 feet with resulting *indoor* decibel levels of 110 dB as measured by the couple. It is impossible for them to converse, be outside, or entertain while the Growlers are flying. Prior to the Navy’s decision to institute the new flight plan this year, the couple used to find their home a peaceful, productive place where it was possible to do technical writing (for Michael) and writing of research papers (for Marge). As a result of the Growler overflights, they no longer can work remotely from their home due to the disruptive noise which makes the environment too distracting to write in and disrupts phone and video conference calls required to perform their jobs. The Growler flights have also interrupted the couple’s sleep and have caused them to flee to their other property, which is in Edmonds, during the weekdays—depriving them of the value of their Island home. The couple constantly worries about the increased possibility of a crash because the Growlers fly directly above their home.

17. John and Victoria (“Vicky”) Kingston own a home at 1280 Farragut Drive in Admiral’s Cove. The property was purchased in September 1972 and the Kingston family built a

home on the property in 1980, which was extensively remodeled between 2004 and 2005. The Kingstons have enjoyed their beautiful property with 180-degree water views of the shipping lanes, magnificent views of the Olympic Mountains, and spectacular sunsets for more than 40 years and have substantial family memories from the home. The Kingstons, who are in their 70s, used to frequently enjoy visits from their grandchildren at the property until the recent four-fold increase in jet activity from the louder Growler jets that fly morning, noon, and night. The Kinston family now finds that they cannot be outside, cannot walk on the beach, cannot have friends over, or even carry on a conversation when the planes are flying. The Kingston family notes that the new Growler jet plan has affected every aspect of their lives. They also fear that they would be unable to sell their property if they wanted to.

18. Paul McDowell and his wife Margaret (“Maggie”) recently inherited their home at 1220 Admiral’s Drive from Maggie’s late parents. They also inherited two other lots in the neighborhood. The vacant lots adjoin each other and adjoin the lot that contains their house and garage. The McDowells and their family have a long history in Admiral’s Cove and previously were not significantly bothered by planes flying nearby. But the flight increase has bothered them. The McDowells’ house has had 17 windows lose their seals as well as two broken window panes—both on the West side of the house facing the water. When passing directly over the McDowell home, the jets come from the water at low altitude and increase their power to bank to the left in order to align their approach to the runway. This vibrates the entire house. The frequent overflights have also destroyed the joy that the McDowells once experienced from their home. When the jets pass, the McDowells are unable to have conversations (both inside and outside), are unable to be outside without ear protection, and are unable to hear the television. The noise and vibrations have destroyed Maggie’s enjoyment of gardening, which is one of her passions. Paul has the same issues

while working on his vintage car. The McDowells also note that their home—which has no air conditioning—now gets hot in the summer since they need to keep all doors and windows closed. If any doors or windows are open, the noise from the passing planes causes ringing in their ears. The McDowells are also very concerned about their pet dog who is very scared of the planes and runs to be inside as soon as she senses the jets approaching. In sum, the plane traffic has disrupted the McDowells every-day life and has caused misery.

19. Barbara Nichols owns a home at 200 Keystone Avenue in Admiral's Cove. During the summer, she rents the home out and lives in another small house that is located in the same neighborhood. She makes this move to enable her to rent out her primary property—which contains both a house and a separate cottage—to vacationers. The jets have already negatively affected Ms. Nichols rental business since vacationers do not want to stay more than the weekend when the jets fly every day during the week. She is concerned that if the jets begin flying on the weekends—which seems inevitable with the volume increase under the new Growler plan—her rental business will be entirely destroyed. Within the last several weeks, she had a renter tell her that the jets were so horrible that the family could not stay there, requiring Ms. Nichols to refund some of their money. Ms. Nichols is also concerned that finding a renter for her cottage in the fall may be difficult as she will have to find someone who is willing to brave the jet noise. As a retiree, Ms. Nichols depends on the rental income to survive. Ms. Nichols reports that when the jets are flying, she must go inside or else her organs vibrate in her chest cavity. She also reports being unable to have a conversation and having to shout over the phone to be heard. She cannot watch television no matter how high the volume is raised.

20. Evelyn Novak lives at 164 Fletcher Place in Admiral's Cove. She also owns another lot, Lot 49, in the neighborhood. She reports that her home shakes violently whenever the Growlers

pass and that it feels like regular earthquakes. The shaking has caused Ms. Novak to suffer nausea in the past. Ms. Novak cannot be outside when the jets pass since ear plugs and construction head phones are not enough to protect against the noise. She states that she is unable to take online classes or training during flight hours because she cannot hear the instructor. Ms. Novak reports that the operations regularly go past 11:00 PM and that she cannot sleep through them so is often sleep deprived. She is also very worried that there will be an accident involving the jets because the planes fly so low over her house. Prior to the recent Growler activity, Ms. Novak used to enjoy listening to the frogs in the wetlands near her home. She no longer hears them anymore.

21. Robert (“Bob”) Peetz and his wife live at 1167 Nimitz Drive in the Admiral’s Cove neighborhood. They purchased the home in December 2010 with plans to remain there through their retirement. Mr. Peetz is a Vietnam and Gulf War veteran who worked as an aircraft mechanic with both the Navy and the Air Force during his 33 years of service. Despite the emphasis on hearing protection during his time in the military, Mr. Peetz suffered from hearing loss and now has a VA rated disability for hearing loss and tinnitus that has worsened since the Navy instituted the new Growler plan at OLF Coupeville. As a result, Mr. Peetz was recently evaluated by the VA for hearing aids and now needs them. Mr. Peetz and his wife note that the recent drastic increase in flying has also made it unbearable to be outside during large periods of time, has made it impossible to watch television, talk to each other, socialize, or talk on the phone. They are also very concerned about the possibility of a jet crashing into their home, especially considering the lack of experience of student trainees who may be piloting the jets.

22. Dr. Bradley Portin and Dr. Mark Wicks own their primary residence at 1276 Byrd Drive in Admiral’s Cove. They bought the land in 2007 and completed the building of their dream home in 2009. As with many of their neighbors, they find themselves unable to carry on normal

conversations while the jets are flying, find they can no longer have visitors for meals during the weekdays, and feel forced to close all windows and doors due to the planes, resulting in a hot home. Dr. Portin and Dr. Wicks are also unable to watch TV or enjoy music without headphones, cannot be outside, and find sleeping improbable while the jets are flying at night. Dr. Portin and Dr. Wicks also have two cats who spend most of the time under beds hiding from the jets.

23. William and Pamela Schroeder bought their home at 1207 Halsey Drive in 2001 and have lived there ever since. They say that they are unfortunately located in a “favored vector” by the Navy for the overflights and, as a result, the planes fly directly over the house at approximately 300 feet. They describe the deafening sound as the “atmosphere itself being torn apart.” The couple notes that it is painful to be outside without ear protection and that, even with ear protection, you cannot have conversations, watch TV, listen to music, talk on the phone, or even read to children. The Schroeders also say that is impossible for kids to focus on homework and they do not think it would even be possible to have a conversation with 911 while the jets are overhead. Mr. Schroeder works the evening shift at work and notes that he dreads coming home at 10 PM when he knows the planes are flying. Trying to relax after work is out of the question. The Schroeders believe it would be impossible to sell their house with the jet activity and fear that all of their equity, which they worked for, was accrued for nothing. They feel trapped by the Navy’s increase in Growler activity at OLF Coupeville.

24. Laurel Seymour lives at 1145 Nimitz Drive in the Admiral’s Cove neighborhood. She has owned the property since November 1991 and began building her home in 1996. Ms. Seymour reports that she has lost seals on several windows and suspects it may be related to the vibration caused by the planes that fly directly above her home. She loves working outside and, even with wearing double ear protection, she does not stay outside long when the planes are flying.

When the planes are flying it is very difficult to have a conversation on the phone or with someone in her home. While watching TV, she must wear headphones to hear the programs which only helps a little. She fears that if the increase flights continue, the beautiful Whidbey Island outdoors will be completely unavailable to residents.

25. Bonnie Shaw owns a home at 1224 Admiral's Drive where she has lived since 2015. The commencement of flight operations out of the OLF this year has made her home difficult to live in. In the summer months, the flights have been starting at 8:00 PM and ending as late as midnight. Ms. Shaw has found it impossible to sleep on these nights due to noise and vibrations from the planes that make her bed shake in a manner that simulates an earthquake. Ms. Shaw's dog Sassy was once so scared by the Growler overflights that she got her foot caught in a rockpile trying to flee the noise and broke her leg. It cost Ms. Shaw \$2,500 to get Sassy surgery. Ms. Shaw is currently studying for a degree as an Occupational Therapy Assistant and is unable to concentrate on her homework or write papers when the planes are flying. She is also unable to sit on her deck or have a conversation during flight hours.

26. Rebecca Wood is an elderly woman living at 1269 Farragut Drive in Admiral's Cove. She has owned the property as her primary residence since 1970 and also owns another property in the neighborhood at Lot 141, Division 3. She has owned the second property since 1976. Ms. Wood has been very troubled by the new Growler operations and has noticed that, since their commencement earlier this year, the seals on her windows have been damaged. She believes this is due to the vibrations caused by the Growlers. In addition, Ms. Wood's enjoyment and use of her properties has been severely impaired by the new Growler overflights. Specifically, her infant grandchild is no longer able to visit since the noise is too severe. Ms. Wood also notes that her sleep and ability to relax has been affected, she cannot have company, she cannot enjoy a

movie or television, and is no longer able to garden or participate in any outdoor activity when the Growlers are flying. Ms. Wood says that the penetrating noise has affected almost every one of her activities. To her, the noise of the approaching jets is the opposite of the sound of freedom.

27. Melvin and Janet Zylstra, who are retired, live at 1288 Russell Drive in Admiral's Cove and their home sits on three distinct lots. They are concerned about the impact that the Growler flight plan has had on the fabric of their neighborhood. They note that people are selling their houses and are desperately trying to move out of the area to avoid the jets. The Zylstras note that property values are plummeting and that even if folks are *able* to sell, the jets reduce the value if known to buyers and serve as a cloud on the sale (with the potential legal implications that follow) if not known to buyers. The Zylstras have lived in the neighborhood since 2006 and note that the Growlers are way more destructive than the Prowler jets previously flown by the Navy. Unlike with the Prowlers, when the Growlers are flying, the Zylstras cannot be outside, cannot entertain, and cannot enjoy television. The planes also keep the Zylstras awake at night.

28. As described below Plaintiffs bring this action individually and as the representatives of all members of a plaintiff class pursuant to Rule 23 of the Rules of this Court.

29. The Defendant is the United States of America, acting through the Department of Defense, Department of the Navy, in operating the Naval Air Station Whidbey Island ("NAS Whidbey Island") in Oak Harbor, Washington and Outlying Field Coupeville ("OLF Coupeville") in Coupeville, Washington. OLF Coupeville is used in conjunction with flight operations at NAS Whidbey Island.

### **JURISDICTION AND VENUE**

30. This Court has subject matter jurisdiction pursuant to the Tucker Act, which confers upon this Court "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress . . . in cases not sounding in tort." 28 U.S.C.

§ 1491(a)(1). This action presents a claim of inverse condemnation against the United States founded upon the Fifth Amendment to the Constitution.

### **FACTUAL BACKGROUND**

#### ***Whidbey Island and the Navy's Historical Operations at OLF Coupeville***

31. Whidbey Island is located in the Puget Sound, approximately 30 miles North of Seattle. More than 80,000 residents live on the 55-mile long island, which includes several small towns, rural areas, farms, parks and reserves. With sweeping views of the mountains and the Sound, large expanses of undeveloped nature preserves, farms, and many miles of parks and beaches, Whidbey Island is an idyllic location. The island is a popular destination for tourists, retirees, and vacation home owners, and a highly desirable site for both longstanding residents and newer arrivals to make their homes.

32. Whidbey Island is also home to Naval Air Station Whidbey Island ("NASWI"), which has hosted naval operations since World War II.

33. NASWI includes Ault Field and a Seaplane Base located near Oak Harbor, Washington, approximately nine miles north of OLF Coupeville on Whidbey Island. According to the Navy, NASWI supports more than 75 tenant commands, including EA-18 Growler operations. [https://www.cnic.navy.mil/content/cnic/cnic\\_hq/regions/cnrnw/installations/nas\\_whidbey\\_island/about/economicimpact/\\_jcr\\_content/par1/pdfdownload\\_473124440/file.res/NASWI%20Economic%20Impact.pdf](https://www.cnic.navy.mil/content/cnic/cnic_hq/regions/cnrnw/installations/nas_whidbey_island/about/economicimpact/_jcr_content/par1/pdfdownload_473124440/file.res/NASWI%20Economic%20Impact.pdf).

34. OLF Coupeville is a small landing strip, isolated from the other NASWI facilities, tucked among farms and residential communities near Coupeville, Washington. Apart from the small landing strip itself and a small control tower, there are no other facilities at OLF Coupeville. OLF Coupeville was built in 1943, during World War II, and was initially used as a secondary landing strip. This landing strip was used for emergency and practice landings until 1946.

Although activity slowed dramatically immediately after WWII, the Navy continued to use the landing strip in support of the Korean War and other operations until 1963 when the Navy declared the facility excess and made plans to sell it.

35. Five years later, however, the Navy reactivated the facility to accommodate the increased demand resulting from the Vietnam War. At that time, the Navy began using OLF Coupeville for “field carrier landing practice,” which simulates landing on an aircraft carrier at sea. These exercises, also known as “touch and go” landings, involve groups of several aircraft flying in patterns, with each plane then approaching the runway, touching down, and then taking off again without coming to a stop. Each aircraft makes multiple touch-and-go landings during each exercise and circles multiple times over the area neighborhoods. Although this activity occurred at OLF Coupeville during the Vietnam War, the Navy’s use of the airstrip declined substantially once the war ended.

36. In the mid-1980s, the Navy again began increasing both the presence of the EA-6B Prowler on Whidbey Island as well as touch-and-go flights of that aircraft out of OLF Coupeville. This increase involving the Prowler resulted in a set of lawsuits that culminated in settlements, with the Navy acquiring a limited aviation easement over several (but far from all) properties in the area. One such case, *Argent v. United States*, alleged that the Prowler flights resulted in an unconstitutional taking of area properties. Although the plaintiffs lost at the summary judgment stage in the Court of Federal Claims, they prevailed on appeal in the Federal Circuit. *Argent v. United States*, 124 F.3d 1277, 1278 (Fed. Cir. 1997). As part of the 1997 settlement of that case, the Navy agreed to limit its flight operations over Admiral’s Cove and payed a lump sum to 16 landowners. **See Exhibit A.** Notably, the limitations that the Navy agreed to included (1) a restriction on the aircraft flown (e.g., the Navy agreed to only fly the A-3D, the A-6E, the Prowler

“*or follow-on aircraft of lesser of comparable noise level*”) and (2) to fly “*no more than 10,000*” flights over the landowner’s property per calendar year using OLF Coupeville. **Exhibit A** (emphasis added). Until the recent change in operating policy, it appeared that the Navy was generally honoring that agreement.

### *The Taking*

37. Also during the 1990s, on information and belief, the Navy negotiated with the community of Coupeville and agreed not to conduct training flights after 10:30 PM, not to fly touch-and-go missions more than two days in a row, and not to fly on weekends. Since then, the community and the Navy have lived in relative peace in accordance with these agreements, giving residents stability and predictability as well as a reasonable expectation that the Navy would continue to be a good neighbor in conducting its operations. The Navy recently shattered that peace.

38. In 2013, the Navy began hinting that it was interested in conducting new operations at OLF Coupeville, particularly with respect to the Growler jets. The Navy later released a draft Environmental Impact Statement (“EIS”) in November 2016 outlining its plans to make NAS Whidbey Island the national hub of Growler activity and home to all of the US Growler squadrons.

39. On June 25, 2018, the Navy announced its preferred alternative resulting in the relocation of 36 Growler aircraft to Whidbey Island as well as 628 Naval personnel. It also announced plans to increase annual airfield operations at the Whidbey Island Complex to more than 112,000 annually. This includes a nearly 400% increase in touch-and-go missions at OLF Coupeville, expanding operations to 24,100 annual flights out of the small air strip that has no real permanent facilities. *See* EIS, Table 4.1-3 (figures for Alternative 2, Scenario A). Of those flight operations, 23,700 are set to be field-carrier landing practices, representing an increase of 17,600

operations over the pre-existing number. *Id.* This amounts to OLF Coupeville absorbing 80% of the total field-carrier landing practice operations in the nation given that the only other field-carrier landing practice base will be Ault Field, which is also at NAS Whidbey Island, that will host 20% of the carrier practices. *Id.* at §§ 4.1 & Table 4.1-3 & 4.1.3.1.2. Worse yet, under the Navy’s selected option, the Navy acknowledges the unpredictable nature of its own training (emphasizing the unpredictable nature of the impact on area residents). For example, the EIS states that “the need for FCLP [field-carrier landing practice] training is largely dependent on operational deployment schedules and aircraft carrier qualification detachment schedules. As such, . . . periods of concentrated FCLP training will occur more frequently.” *Id.* at § 4.1.3.1.2.

40. The United States Navy’s Record of Decision was signed on March 12, 2019. The final Environmental Impact Statement was published on September 28, 2018. On March 8, 2019, Richard Spencer—the Secretary of the Navy—issued a National Historic Preservation Act, Section 106, decision to move forward with the proposed undertaking of expanding the EA-18G Growler operations at the Whidbey Island Complex even though that decision would result in adverse indirect effects to the Central Whidbey Island Historic District.

41. The Navy immediately began increasing the operations, including touch-and-go practices, at OLF Coupeville resulting in close overflights of Plaintiffs’ homes nearly every day during the workweek. The flights occur in the afternoons and evenings and night flights occur several times per week and last as late as midnight.

42. NAS Whidbey Island also updated its website indicating that “flying can occur any day of the week depending on mission needs” and indicating that weekend missions are fair game if “dictated by mission needs.” <https://www.cnrc.navy.mil/regions/cnrnw/installations/>

nas\_whidbey\_island/om/environmental\_support/growler-fact.html (last visited August 27, 2019). However, the Navy has indicated that it will continue to “minimize flights at OLF Coupeville” during weekends. *Id.*

***Most of Plaintiffs’ Homes Are Within the Accident Potential Zone***

43. The final Environmental Impact Statement—which purports to describe environmental impacts and does not authorize action—outlines an approximate 33 percent increase in the Navy’s EA-18G Growler operations on Whidbey Island under the plan the Navy has now put into action. The final Environmental Impact Statement explicitly stated that the “high numbers of operations at OLF Coupeville” would “require the development of Accident Potential Zones (“APZs”) through the AICUZ update process.”<sup>1</sup> The Environmental Impact statement outlines what these required zones would look like for the now-selected alternative and establishes that most of the Plaintiffs’ homes fall within the APZ area. Environmental Impact Statement for EA-18G “Growler” Airfield Operations at Naval Air Station Whidbey Island Complex, WA, Figure 4.3-2 (September 2018).

44. DOD Instruction 4165.57 sets forth “Department of Defense policy on achieving compatible use of public and private lands in the vicinity of military airfields” including defining “required restrictions on the uses and heights of natural and man-made objects in the vicinity of air installations to provide for safety of flight and to assure that people and facilities are not concentrated in areas susceptible to aircraft accidents” as well as establishing “desirable restrictions on land use to assure its compatibility with the characteristics, including noise, of air installation operations” and also “provides policy on the extent of Government interest in real

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<sup>1</sup> Environmental Impact Statement for EA-18G “Growler” Airfield Operations at Naval Air Station Whidbey Island Complex, WA (September 2018).

property within these zones which may be retained or acquired to protect the operational capability of active military airfields.”

45. The Navy’s regulations issued by the Chief of Naval Operations, OPNAVINST 11010.36C, state that studies performed “showed that most aircraft mishaps occurred on or near the runway, with mishaps diminishing in likelihood with distance” and that “[b]ased on these studies, the Navy and other services have identified APZs” that “follow departure, arrival, and pattern flight tracks and are based upon analysis of flight operations data and historical aircraft accident data and locations of accidents relative to the airfield.” Accordingly, the “Navy recommends that the intensity and density of land uses within APZs be minimal or low to ensure the maximum protection of public health and property.”

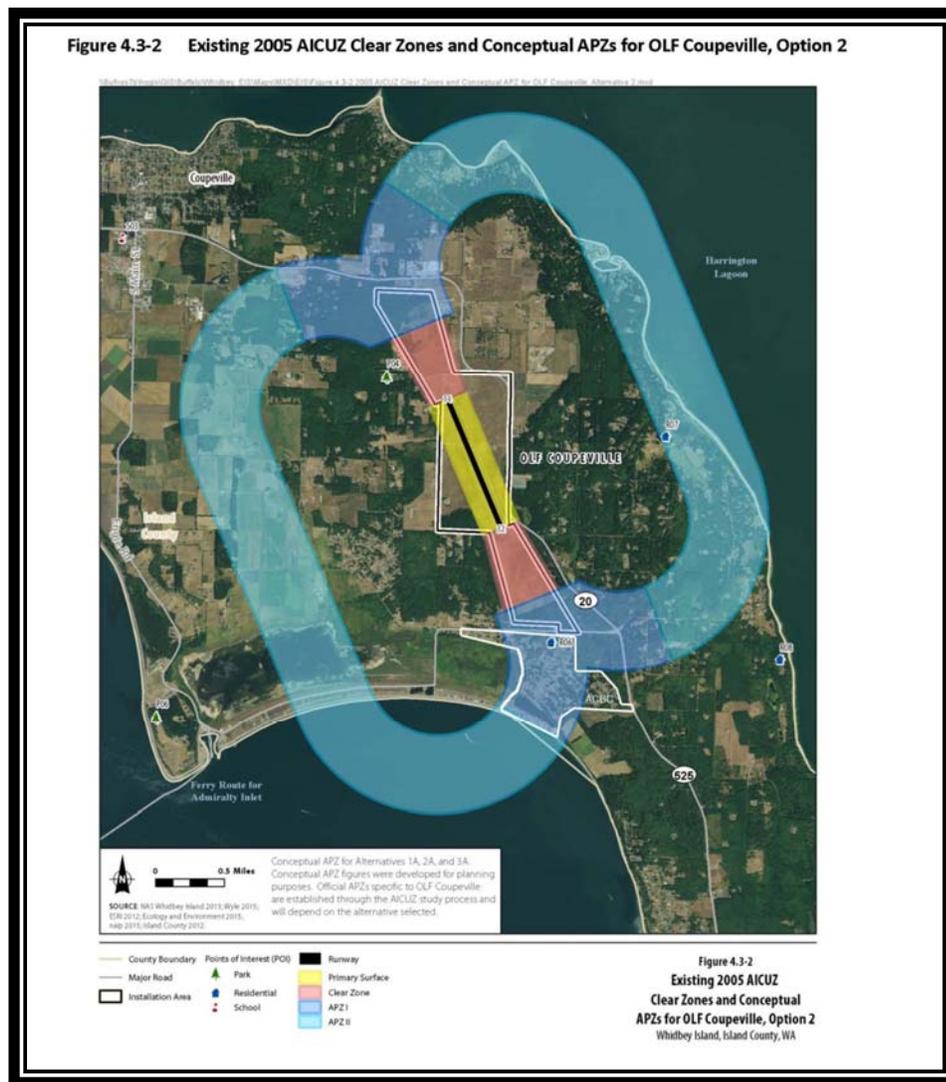
46. As such, the OPNAV Instructions establish three “Zones” that are deemed incompatible with most residential use and apply when a certain threshold of flight operations is reached. Those zones are as follows:

- (a) **Clear Zone:** Extends 3,000 feet immediately beyond the runway and has the highest potential for accidents. It measures 1,500 feet wide at the end of the runway and 2,284 feet wide at its outer edge. A Clear Zone is required for all active runways and should remain undeveloped. It is a trapezoidal area.
- (b) **APZ-I:** Extends 5,000 feet beyond the Clear Zone, with a width of 3,000 feet. An APZ-1 is typically rectangular; however, when circumstances warrant, the APZ-1 may be curved to correspond with predominant flight tracks. An APZ-I area is provided for flight tracks that experience 5,000 or more annual operations (departures or arrivals).

(c) **APZ-II:** Extends 7,000 feet beyond APZ-I, with a width of 3,000 feet.

Similar to APZ-I, the geometric configuration of APZ-II may also be curved. When FCLP is an active aspect of aircraft operations at an installation, APZ-II extends for the entire FCLP track APZ-I, resulting in a closed loop for the entire pattern.

47. The Final Environmental Impact Statement sketched out the “APZs” for OLF Coupeville based on the number of flights proposed and now adopted as part of the Growler Expansion Project. The proposed APZs are illustrated below:



Environmental Impact Statement for EA-18G “Growler” Airfield Operations at Naval Air Station Whidbey Island Complex, WA, Figure 4.3-2 (September 2018).

48. Nearly the entire Admiral’s Cove community is within the area designated as requiring primary APZ status, the area denoted in blue in the above map. The Navy’s own regulations establish these zones to protect people from the risks of aviation accidents and advise against residing within these zones, which create a closed circular pattern.

49. Prior to now, Coupeville did not have any APZs because the last time an AICUZ study was performed, in 2005, there were not the threshold number of flights out of OLF Coupeville—deemed to be 5,000 operations annually on the same arrival, departure, or pattern flight track—to require APZs. *See* file:///C:/Users/jfarleig/Downloads/NAS%20Whidbey%20Island%20AICUZ%20(1).pdf at § 5.2.4 (noting that at OLF Coupeville, “[w]hile FCLP patter[n]s will continue to exist . . . , numbers of operations are currently projected to fall below the current level for establishment of APZ I or II at this location and therefore are not depicted”). The Navy is currently performing well over the number of threshold missions to require APZs.

50. Since 1967, there have been at least 20 crashes of planes operating out of or near NAS Whidbey Island, mostly the Navy’s A-6 Grumman Intruder and the EA-6B Prowler. One Prowler crash occurred on approach to OLF Coupeville in 1982 when practicing touch-and-go landings. In the crash, which occurred off of government property, all three crew members, including Student Pilot Lt Commander Mike Jenkin, Lt David Dillon and Lt (JG) David Palmer were killed. Another Prowler crashed in 1985 upon landing on Ault Field’s runway. Since then, at least three A-6 Intruders have crashed on the Ault Field runway or near Ault Field.

***Noise and Vibration Have Taken Plaintiffs' Ability to Use and Enjoy Their Properties***

51. On information and belief, the Growler jets are significantly louder than predecessor jets. The EA-18G Growlers are specialized jets manufactured by Boeing. They are a modified version of the F/A-18 Super Hornet that focus on electronic warfare. These newer jets first became operational in late 2009 and contain electronic warfare weaponry produced by Northrop Grumman. The jets can perform escort jamming and standoff jamming missions and together can generate targeting tracks for hostile radio-frequency sources in real time. The jets are 60.2 feet long, 16 feet high, and have a wingspan of 44.9 feet. Their empty weight is 33,094 pounds and they have a thrust of 44,000 pounds and an estimated top speed of 1,181 miles per hour. They are believed to contain a modified General Electric engine, related to the General Electric F414, that provides additional power.

52. Plaintiffs are informed and believe, and thereon allege that the Navy in conjunction with Boeing is developing upgrades to the Growler fleet, including improved sensor capabilities and more efficient fuel tanks. These upgrades were mentioned at the 2019 Sea-Air-Space expo.

53. Using what Plaintiffs believe to be a flawed model that understates jet noise, the Navy admits that the noise from these jets exceeds the noise from predecessor planes that have used OLF Coupeville.

[https://www.cnic.navy.mil/regions/cnrnw/installations/nas\\_whidbey\\_island/om/environmental\\_support/growler-fact.html](https://www.cnic.navy.mil/regions/cnrnw/installations/nas_whidbey_island/om/environmental_support/growler-fact.html) (last visited September 12, 2019) (“The noise study does acknowledge that the Growler is 1 dB SEL louder during arrival than the Prowler.”). The Navy also admits that “[a]s noted in the EIS, the Growler. . . has a slightly higher potential to cause noise-induced vibrations.” *Id.* In fact the plane’s namesake in part derives from the low frequency “rumble” of its jet engines. *Id.* (The Prowler jet engines operated at a higher frequency.) *Id.* The

noise, vibrations, and fumes from the increase in Growler flights is having a substantial adverse impact on area residents' ability to enjoy their properties.

54. Now that the Navy has executed its new plan to increase the number of missions at OLF Coupeville from 6,510<sup>2</sup> to 24,100 annually—with more than 98% of those being flown by the Growler, property owners have experienced loss of the enjoyment and use of their land.<sup>3</sup>

55. The EIS describes the alternative the Navy has selected and the alternative it has selected “would have significant noise impacts in the communities surrounding . . . OLF Coupeville.” EIS at § 4.2.3.5. In particular the EIS acknowledges that “there would be a larger impact for the communities around OLF Coupeville under Scenario A,” which is the elected scenario as compared to other scenarios that envisioned fewer touch-and-go landing practices out of OLF Coupeville. *Id.*

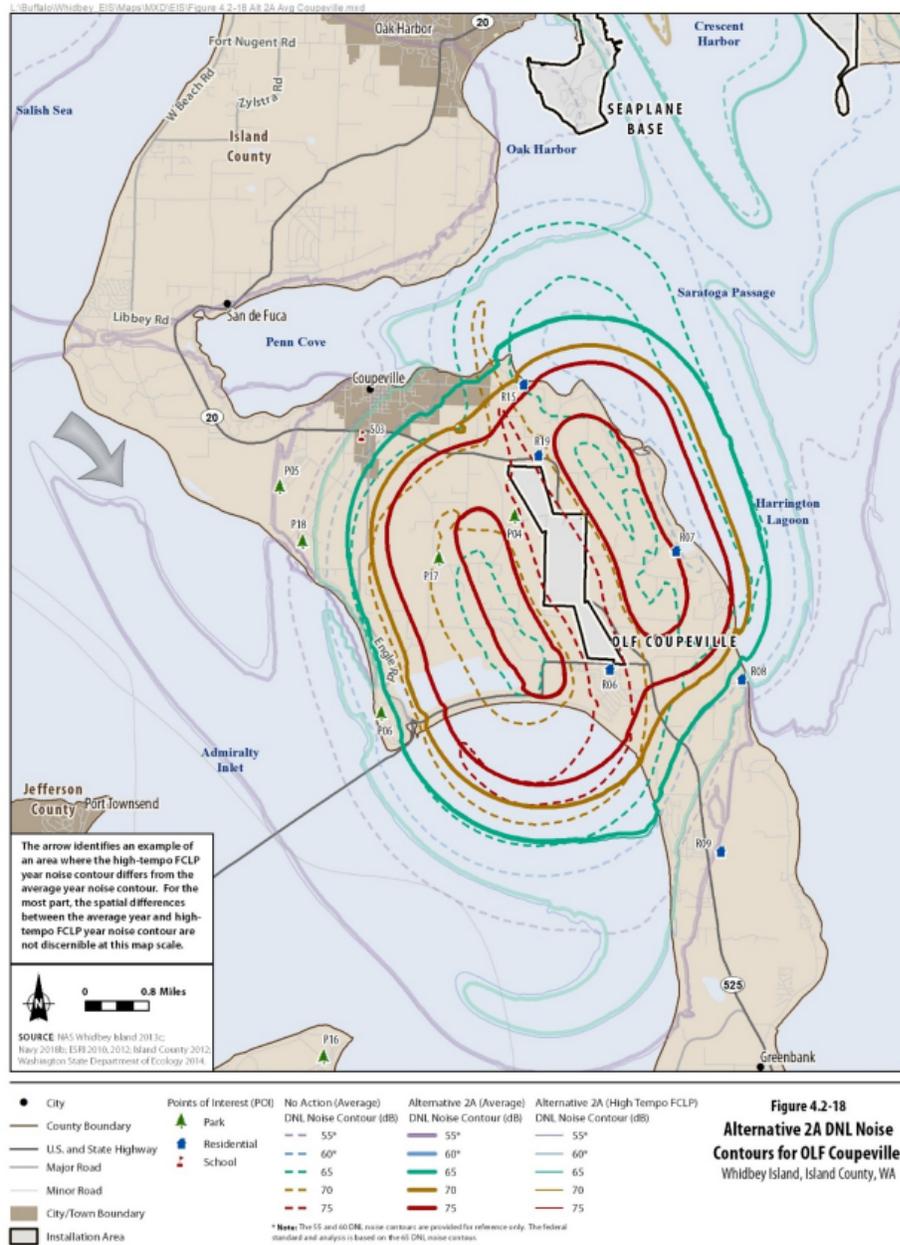
56. In particular, the Alternative 2A DNL Noise Contour chart from the EIS includes the following noise contour mapping at Figure 4.2-18, showing that all of Plaintiffs' homes are within a geographic area that experiences Day-Night Average Sound Level during high tempo field-carrier landing practices greater than 65 decibels:<sup>4</sup>

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<sup>2</sup> Jessie Stensland, *Navy Releases Final EIS on Growlers*, Whidbey News-Times (September 29, 2018).

<sup>3</sup> *Navy Announces EIS Preferred Alternative for Growler Operations at NAS Whidbey Island and Releases NHPA Section 106 Consultation*, Press Release from the United States Fleet Forces Command, June 25, 2018; *see also* Environmental Impact Statement for EA-18G “Growler” Airfield Operations at Naval Air Station Whidbey Island Complex, WA § 2.4 (September 2018).

<sup>4</sup> Plaintiffs note for purposes of the Complaint that Plaintiffs believe the mapping in this chart under-represents the effect on members of the community. That said, Plaintiffs currently use this mapping to help define the second class.



**Figure 4.2-18**  
**Alternative 2A DNL Noise**  
**Contours for OLF Coupeville**  
 Whidbey Island, Island County, WA

57. Because the FAA has established 65 DNL as the threshold above which aircraft noise is considered to be incompatible with residential areas and the EIS notes that the average sound level over a 24-hour period for this area exceeds that figure, the EIS evidences that homes within this zone are being rendered inhabitable by noise. *See* Federal Aviation Regulations Part 150. This is on top of the fact that many of the homes are within a danger zone for a jet crash as outlined by the EIS.

58. Residents are unable to go outside, garden, walk their dogs, watch television, sleep, read, converse, or entertain because the noise from the jets is unbearable. They also cannot plan ahead since they do not know well in advance when the planes will fly. They are forced to keep doors and windows closed in the middle of a hot summer due to the noise and fumes from the jets. They likewise are unable to sell their properties for full value and many are unable to sell their properties at all because full and fair disclosure of the jet traffic increase as well as the resulting uncertainty regarding the habitability of the properties scare off any potential purchasers.

59. Recognizing the severity of the issue, two churches in Freeland—Trinity Lutheran Church and the Episcopal Church—are exploring the possibility of offering refuge for Coupeville residents when the Growlers are flying. Specifically, this project is targeting people on chemotherapy, PTSD sufferers, people who need to make calls for business but can't use the phone during the flights, and mothers with children and babies.

### **CLASS ACTION ALLEGATIONS**

60. Plaintiffs bring this action individually and as the representatives of all members of a plaintiff class pursuant to Rule 23 of the Rules of this Court.

61. This action is properly maintainable as a class action pursuant to Rule 23 of the Rules of the United States Court of Federal Claims (“RCFC”)

62. The class of persons represented by Plaintiffs is composed of all property owners whose use and enjoyment of their real property was destroyed or substantially interfered with on and after March 12, 2019 by the increased operations of the Navy’s EA-18G Growler fighter jets from NAS Whidbey Island and OLF Coupeville over and around Plaintiffs’ property, which constituted a taking by the United States without payment of just compensation. The classes of Plaintiffs include two subclasses, which are defined as follows:

- **Subclass 1 – Owners of Properties in the APZ Zones:** Owners of all residential properties as of March 12, 2019, located in one of the Accident Potential Zones included in the Navy’s Final Environmental Impact Statement dated March 12, 2019. Such areas would include those demonstrated by the image in Paragraph 47 of this Complaint.
- **Subclass 2 – 65+ dB DNL:** Owners of all residential properties as of March 12, 2019, located in a noise zone of 65+ dB DNL or Day-Night Average Sound Level during high tempo field-carrier landing practices, currently outlined by a Noise Contours Report at Figure 4.2-18 of the final Environmental Impact Statement.<sup>5</sup> See <http://whidbeyeis.com/Documents/Final/Chapter%204%20%20Environmental%20Consequences.pdf> at § 4.2.3.1 (last visited August 2, 2019).

63. Numerosity (RCFC 23(a)(1)): Members of the Class are so numerous that joinder is impracticable. Plaintiffs believe that there are more than 494 homes in Admirals Cove specifically and many more in the surrounding areas. The Plaintiffs estimate that there are more than 1,200 people residing specifically in the Admiral’s Cove neighborhood. Overall, there are approximately 3,000 people residing in the proposed class areas. The names and addresses of the residences of the community are identifiable through local property records maintained by Island County and the members of the Class may be notified of this action by mailed notice, among other means. Additionally, the class as defined above is definable and manageable. The number of class members is in the thousands and constitutes a class so numerous that joinder of all class members is impracticable. Plaintiffs are members of the Class.

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<sup>5</sup> Plaintiffs reserve the right to use substitute mapping based on actual flight patterns and the analysis of its own experts. Plaintiffs have doubts about the accuracy of the Navy’s noise contour mapping as included in the Environmental Impact Statement.

64. Common Questions of Fact and Law (RCFC 23(a)(2)): There are questions of law and fact common to the Plaintiffs and to the proposed Class. These questions predominate over questions that may affect individual Class members and include, but are not limited to, the following:

- (a) Did the Navy increase its operations out of OLF Coupeville after it issued its Record of Decision in early 2019 as part of its transfer effort to the more than 112,000 planned operations annually as denoted in the March 12, 2019 Environmental Impact Statement?
- (b) Has such action by the United States regarding the new plan of operation for the EA-18G Growlers deprived owners of real property of the use and enjoyment of their land and homes such that it constitutes a taking of private property for public use within the meaning of the Fifth Amendment to the Constitution?
- (c) Must the United States pay just compensation to the Plaintiffs for the taking of their property for public use?

65. Typicality (RCFC 23(a)(3)): Plaintiffs' claims are typical of the claims of each member of the Class because plaintiffs, like every member of the Class, own land that is affected by the 2019 commencement of flight operations of the EA-18G Growlers out of NAS Whidbey Island and, more specifically, by touch-and-go operations at OLF Coupeville. More specifically, all land in the APZ is affected in the *same way* since the flight increase effectively renders this land incompatible with residential use. Similarly, all land outside of the APZ but located in the noise zone of 65+ dB DNL or Day-Night Average Sound Level during high tempo field-carrier landing practice likewise is affected in the *same*

way by the OLF flights given that the FAA in its Federal Aviation Regulations Part 150, Airport Noise Compatibility Planning Program, and in other policies uses 65 dB as the relevant threshold for compatibility.

66. Adequacy (RRCFC 23(a)(4)): Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of other members of the Class they seek to represent; they have retained counsel competent and experienced in prosecuting class action litigation; and they intend to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

67. Generally Applicable Government Action (RCFC 23(b)(2)): The United States has acted on grounds generally applicable to the Class, namely by its taking of private property by the operation and overflights of the EA-18 Growlers. The United States, at all times relevant to this case, operated NAS Whidbey Island in Oak Harbor, Washington, and OLF Coupeville in Coupeville, Washington.

68. Predominance and Superiority (RCFC 23(b)(3)): The questions of law or fact common to Class members, as described above, predominate over the only question affecting individual members, the calculation of damages based on the value of their properties and the dates on which their properties were acquired. Such determinations would be entirely formulaic. Once the government's liability has been adjudicated, the claims of all members of the Class can be determined by the Court and administered efficiently in a manner that is far less erroneous, burdensome, and expensive than if it were attempted through filing, discovery, and trial of all individual cases. In addition, a class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

- (a) Individual damages to many Class members may be less than, or not substantially more than, the amount of individual litigation expenses, making the expense of non-class litigation prohibitive or impractical for Class members;
- (b) No reason suggests that members of the Class otherwise have an interest in individually controlling the prosecution of separate actions;
- (c) Plaintiffs know of no difficulty to be encountered in the management of this case as a class action;
- (d) The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, whereas a class action will assure uniformity of decisions among members of the Class; and
- (e) Certifying this matter as a class action will serve the overall interests of justice by providing the most efficient and cost-effective method of resolving the lawsuit without duplicative litigation, while allaying statute of limitations or other concerns.

**COUNT I**

**(Violation of the Takings Clause of the Fifth Amendment)**

69. Plaintiffs incorporate the allegations in foregoing paragraphs as if fully set forth herein.

70. The new operations from the EA-18G Growlers dramatically increased the number of flights at NAS Whidbey Island and OLF Coupeville. Further, the EA-18G Growlers produce

significantly higher levels of noise and vibration than predecessor aircraft, such as the EA-6B Prowlers.

71. The noise and vibrations from the regular, frequent, and persistent flights of the EA-18G Growler fighter jets directly over and in close proximity to Plaintiffs' properties has substantially interfered with the use and enjoyment of Plaintiffs' property and has destroyed the value of Plaintiffs' property.

72. The substantial interference with the use and enjoyment of their homes constitutes a physical taking of Plaintiffs' private property for public use by the Defendant, United States.

73. Under the Fifth Amendment, Plaintiffs are entitled to just compensation for the property taken for public use.

74. Despite increasing operations and flying louder planes out of OLF Coupeville, the Navy has not offered to provide compensation to affected property owners. As a result Plaintiffs have been required to retain attorneys, file suit, and retain several experts. This has resulted in significant expense. Plaintiffs will also incur additional expenses in their efforts to obtain rightful and just compensation for the Navy's taking.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand just compensation in an amount to be determined at trial to which they are entitled under the Fifth Amendment to the Constitution, and for such further relief as justice demands. Specifically, Plaintiffs respectfully pray that this Court:

- (a) In accordance with RCFC 23, certify a class, consisting of owners of all residential properties as of March 12, 2019, located in the Accident Potential Zones described in the Navy's Final Environmental Impact Statement dated March 12, 2019 and owners of all residential properties as of March 12, 2019, located in a noise zone of 65+ dB DNL or Day-

Night Average Sound Level during high tempo field-carrier landing practices;

- (b) Award damages to Plaintiffs equal to the just compensation to which they are entitled under the Fifth Amendment, including compound interest from the date of taking at a rate to be established by the Court;
- (c) Award Plaintiffs a reasonable attorneys' fee, together with expenses (e.g., appraisers and other experts);
- (d) Award Plaintiffs their costs of suit; and
- (e) Award such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Roger J. Marzulla

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Dated: September 12, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Roger J. Marzulla  
Attorney Signature