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Like a Good Neighbor – Planning for and Defending Airport Noise Claims



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Washington Public Ports Association
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Overview

- Background
- Defense Starts With Planning & Study
 - Land Use Planning & Permitting
 - Documenting The Noise Environment
- Tools for Defense
 - Express & Prescriptive Easements
 - Published Noise Exposure Maps
 - Challenging Causation
 - Defeating Collective/Class Claims
- Q&A

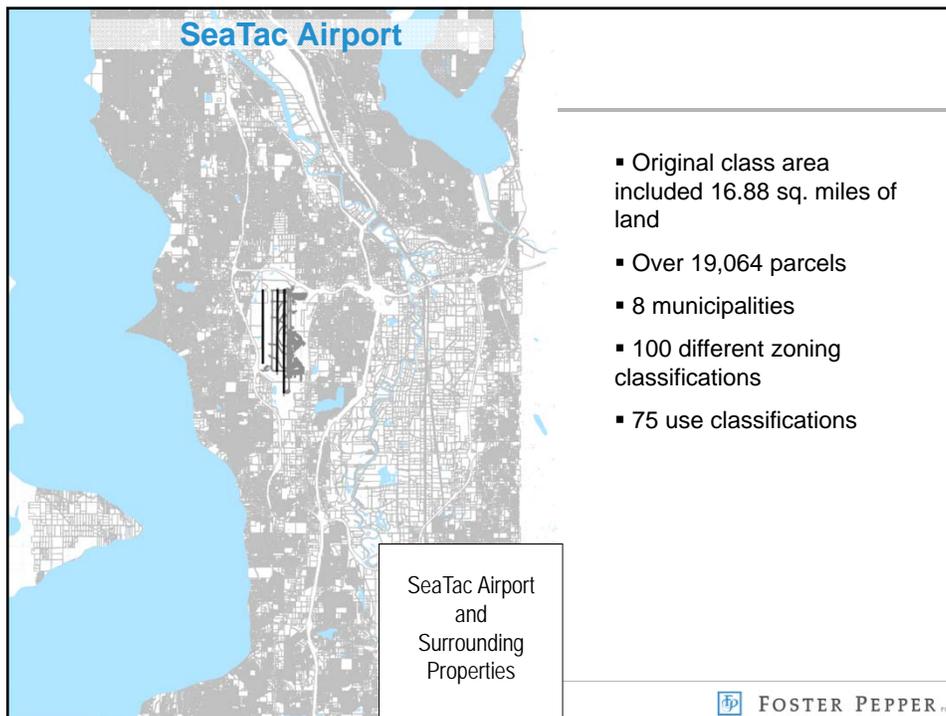


Key Dates: Sea-Tac Airport Third Runway

- 1988 – Port, FAA & planners predict Sea-Tac will reach maximum capacity by 2000
- 1989 – Puget Sound Air Transportation Committee formed to review airport needs
- 1990 – Air Transportation Commission reviews statewide airport needs
- 1992 – Port authorizes “Master Plan Update” and EIS for Sea-Tac expansion
- 1994 – Port of Seattle updates Part 150 Noise Study
- 1995 – Port of Seattle and FAA issue draft EIS for Third Runway
- 1997 – FAA approves Third Runway – Requires Further Noise Mitigation
- 2002 – Port of Seattle updates Part 150 Noise Study
- 2008 – Third Runway opens on November 20, 2008
- 2009 – Class action lawsuit filed

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Common Claims Based on Airport Operations

- Inverse Condemnation (Against Municipal Operators)
 - Taking or damaging of private property for public use without just compensation paid by the governmental entity
 - Diminution in value must be caused by the government's activity
- Nuisance
 - Substantial and unreasonable interference with the use and enjoyment of land
 - Recovery for personal injuries only; real property damages preempted
- Trespass
 - Intrusion onto property without the owner's permission
 - Preempted by inverse condemnation claim

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Defending Noise Claims Starts With Planning

- Navigating the Permitting and Land Use Planning Process
- Documenting Noise Environment Over Time

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Using Land Use Law To Protect Airports



- Defend against encroaching land uses
- Work with surrounding jurisdictions to protect airports and associated land uses
- Create a solid record during land use planning and permitting
- Overcome community opposition to airport expansion

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Examples of Land Use Tools



- Under Washington's Growth Management Act—airports may be "essential public facilities" which limits the ability of surrounding jurisdictions to prevent siting or expansion
- Critical areas regulation—moved compensatory wetland mitigation away from the airport to address bird strike issue
- State Environmental Policy Act ("SEPA")—ensure that SEPA analysis adequately addresses anticipated environmental impacts
- Key to defense is to build a solid administrative record during permitting processes
- For municipal operators—address issues that arise under Washington's Public Records Act

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Documenting the Noise Environment

- Show the evolution of aircraft noise over time
- FAA-mandated aircraft noise metric is Day/Night Average Sound Level (DNL)
 - Describes average annual noise exposure based on all airport operations
 - Considers number of operations, fleet mix, runway use, flight tracks, time of day (10 dB penalty for nighttime operations)
- Tools for Measuring Noise: Aircraft Noise and Operations Management Systems (ANOMS), FAA-approved noise models (e.g., Integrated Noise Model), portable noise monitoring devices
- Opportunities for Noise Documentation: Part 150 studies, Master Plan Updates, Environmental Assessments

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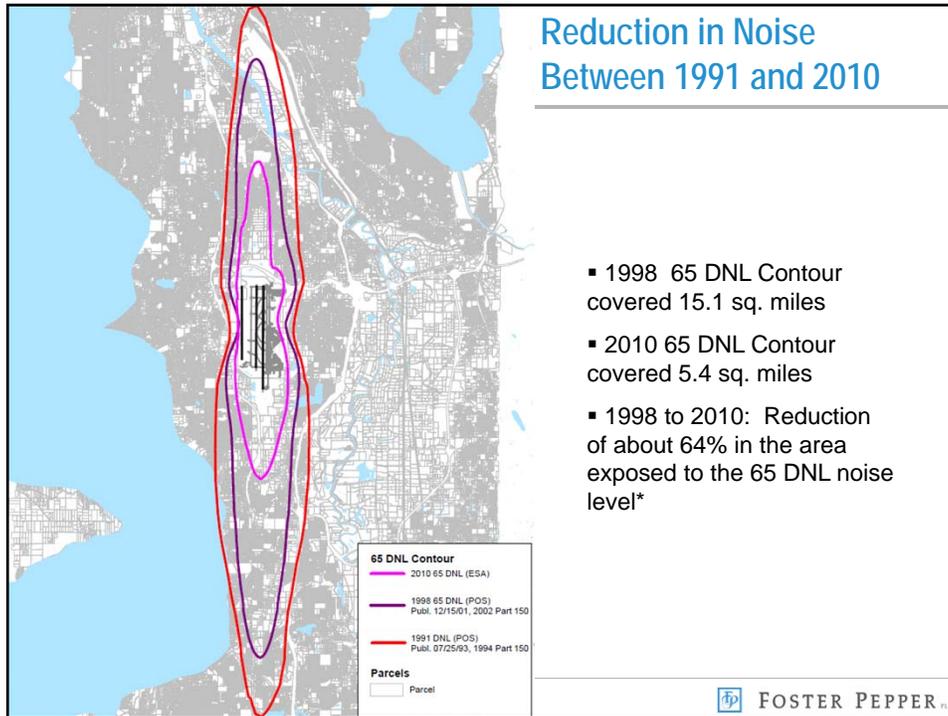
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Noise Exposure Maps (NEMs)

- Federal law limits liability for airport operators who publish notice of FAA-approved Noise Exposure Maps (NEMs)
 - Part of Part 150 Process – 14 C.F.R. § 150.21(f)
 - Prepare map per FAA Procedures – Part 150 Appendix A
 - Shows noise contours keyed to land use compatibility
 - FAA accepts NEMs
 - Publication of NEMs

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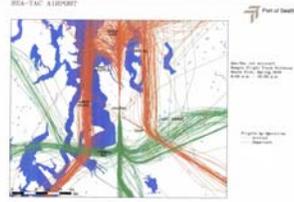
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Defense Tools: Using Federal Preemption and Regulatory Framework

- Congress has enacted a “uniform and exclusive system of federal regulation”
- Prevents plaintiffs from placing ad hoc limitations on operations
- Allowed us to promptly dismiss the claim to prevent takeoffs and landings at Sea-Tac between 10 pm and 7 am

Defense Tools: Avigation Easements



- Easement—non-possessory right to make use of another's property
- Avigation easements are recognized under Washington law and are statutorily required in consideration for providing noise insulation (RCW 53.54.030)
 - **Express**—written easement provided to airport by property owner for some type of consideration
 - **Prescriptive**—acquired by conducting aircraft operations for a period of at least ten years in a manner that was open, notorious, and hostile to the landowner's interest
- Contract formation is crucial
 - Fair Process
 - Clear, Objective, Enforceable Terms

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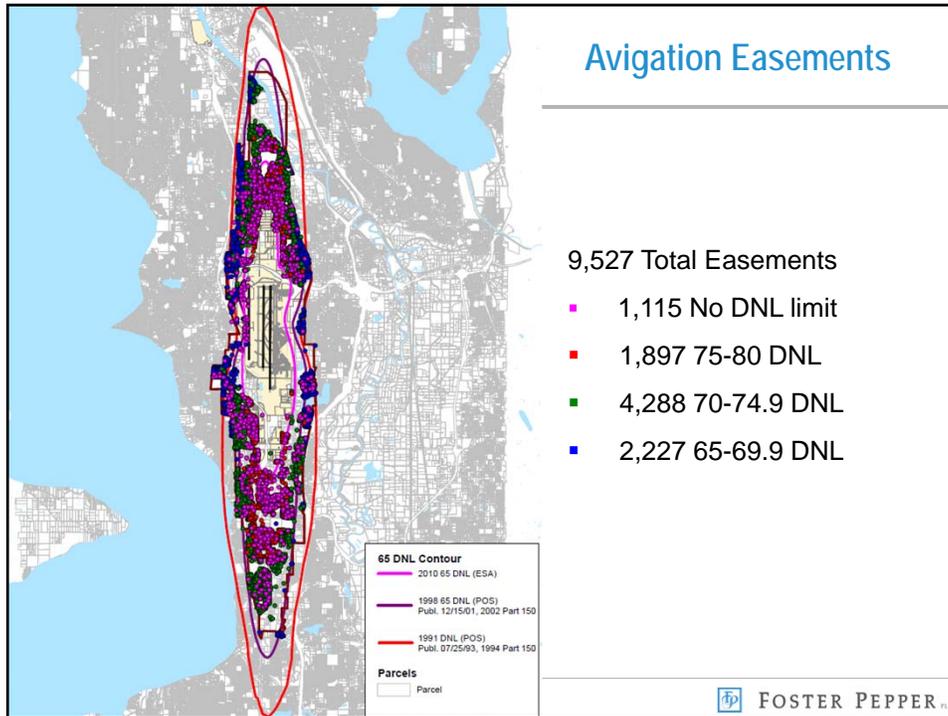
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Port of Seattle Avigation Easements

- Avigation Easements
 - Port conducted Noise Remedy Program since 1980s
 - 9,537 single family residences have participated—nearly all homes within the 65 DNL or greater noise contour
 - Insulation package installed
 - Paid money
 - Consideration: Granted Port an easement for "unlimited aircraft operations over or in vicinity of" property.
 - Easement remained valid unless property owner showed that noise had increased by at least 1.5 dB DNL over easement level
 - Created a defense against many of the most noise-impacted properties.

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Defense Tools: Limiting Claims with Published Noise Exposure Maps (NEMs)

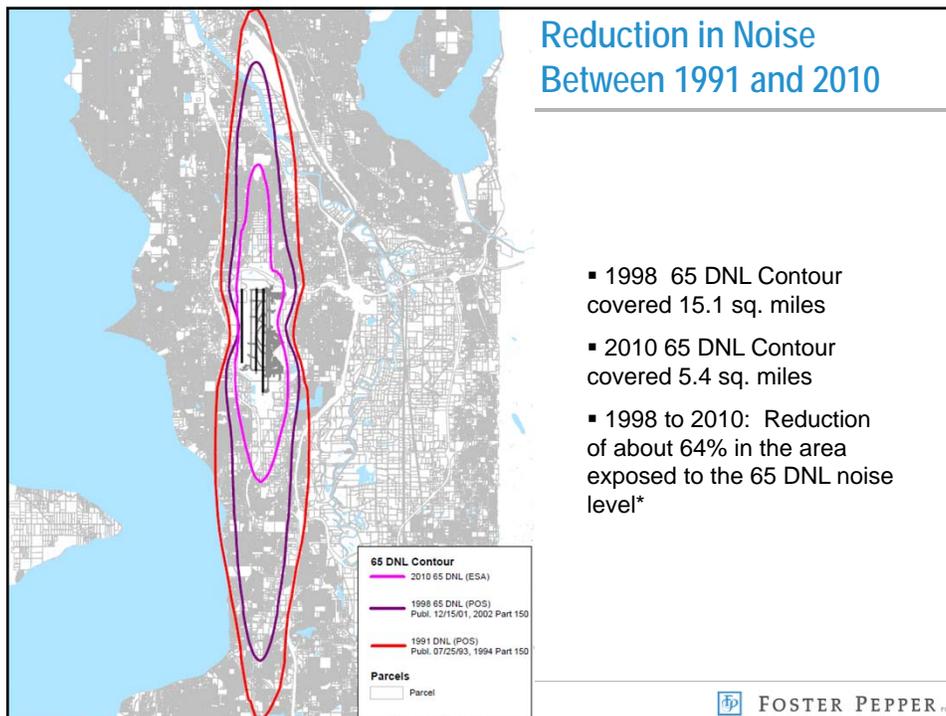
- Federal law limits liability for airport operators who publish notice of FAA-Approved Noise Exposure Maps (NEMs)
- Defense based on notice of noise environment around airport
- Claims for noise-based damages are barred unless the claimant can show:
 - Significant change in airport operations (increase of at least 1.5 dB DNL)
 - "Substantial, new noncompatible use" (65 dB DNL contour)
- Court Dismissed Claims on Summary Judgment – No Trial

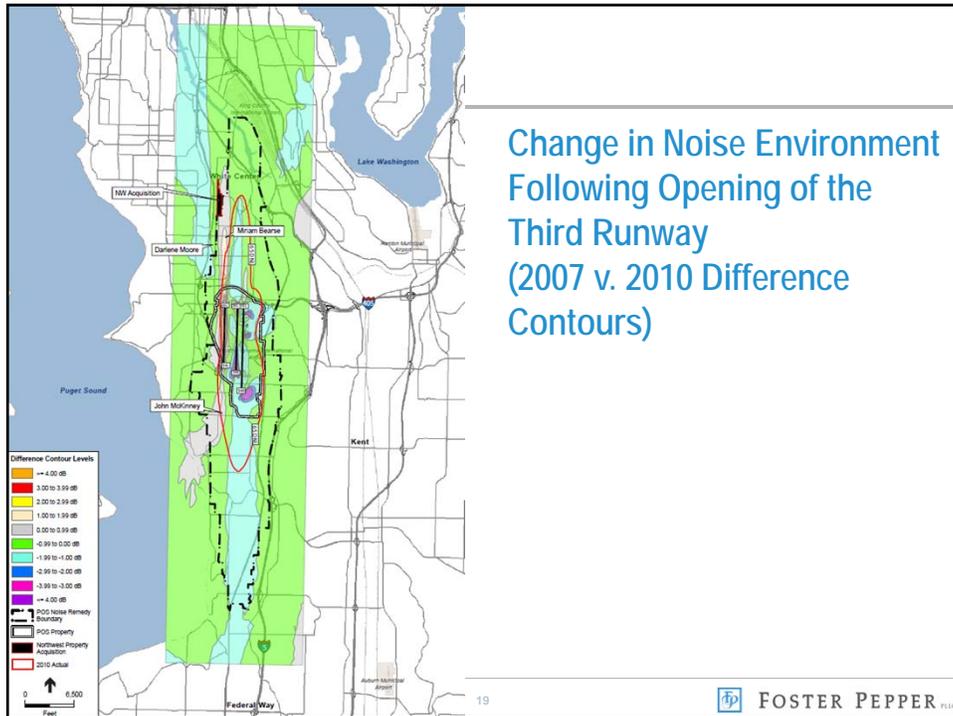
Refuting Claims That Noise Has Increased

- Surrounding property owners often rely upon anecdotal testimony claiming:
 - Noise increased;
 - Quality of life impacted (telephone, TV, sleep);
 - Vibrations shaking home apart;
 - Emissions coating property and smell of jet fuel.
- Property owners must prove damages “CAUSED” by airport operations;
- Goal of the airport operator is to use objective evidence to demonstrate the true story:
 - Example: Even with the opening of the Third Runway, aircraft noise had decreased due to changes in fleet mix and a reduction in operations.

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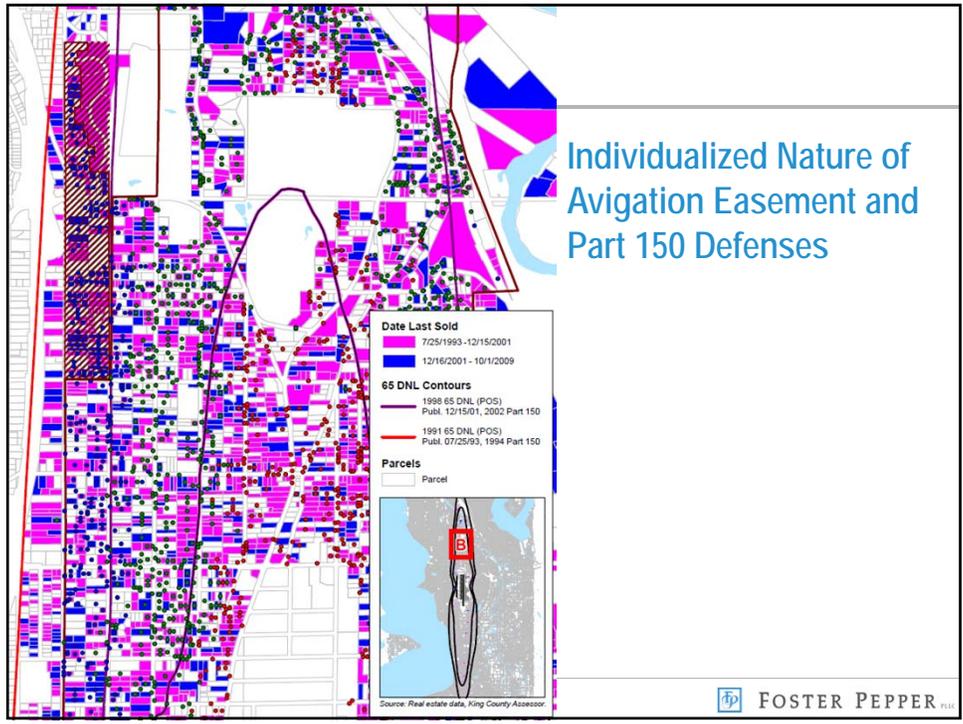
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Using Noise Data to Defeat Class Actions

- Class actions create potentially overwhelming liability
- Class actions require proof of common harm
 - Representative cases must establish liability to whole class
 - Theory is that common issues allow efficient resolution
- Class actions not proper for airport noise claims
 - Noise, vibrations, emissions vary at each property
 - Impact on value requires individualized analysis
 - “Use & enjoyment” claims are case by case



Q&A

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