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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



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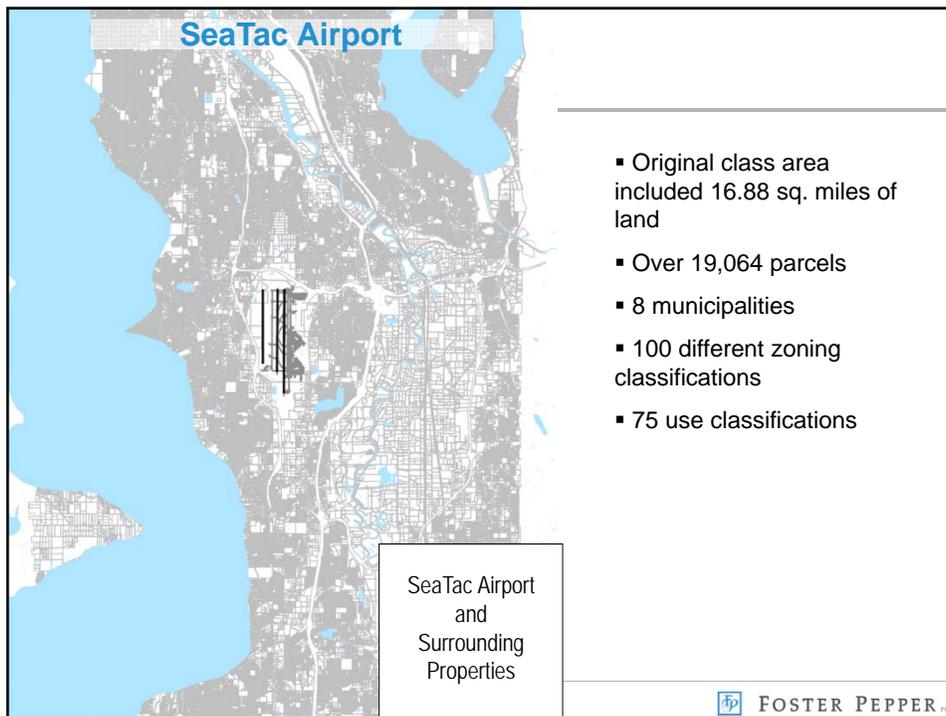
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## Key Dates: Sea-Tac Airport Third Runway

- 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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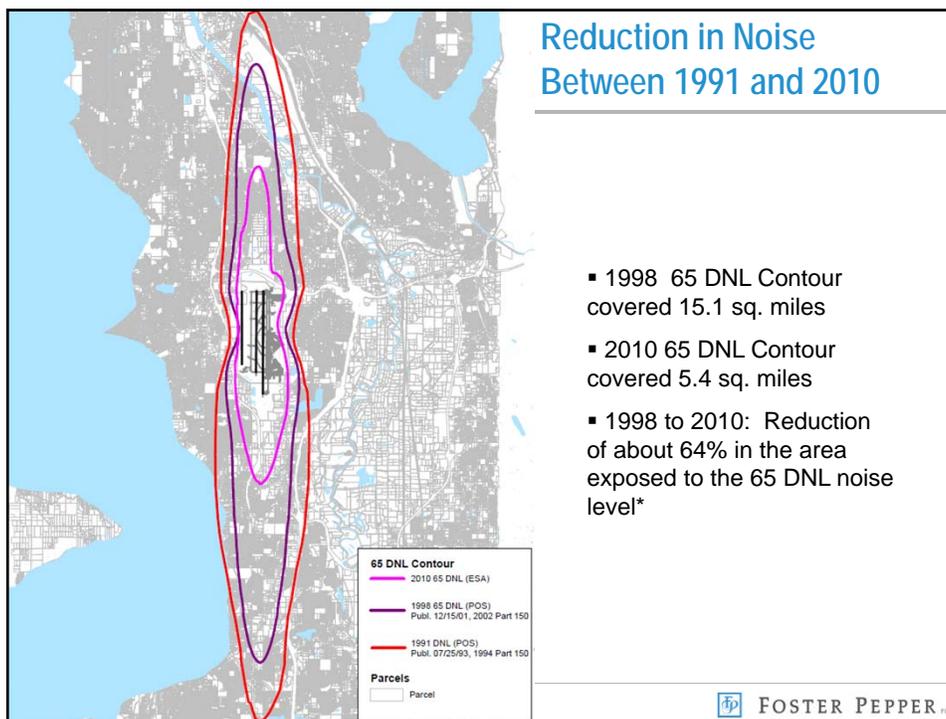
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## Noise Exposure Maps (NEMs)

- 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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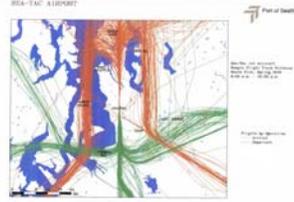
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### Defense Tools: Using Federal Preemption and Regulatory Framework

- 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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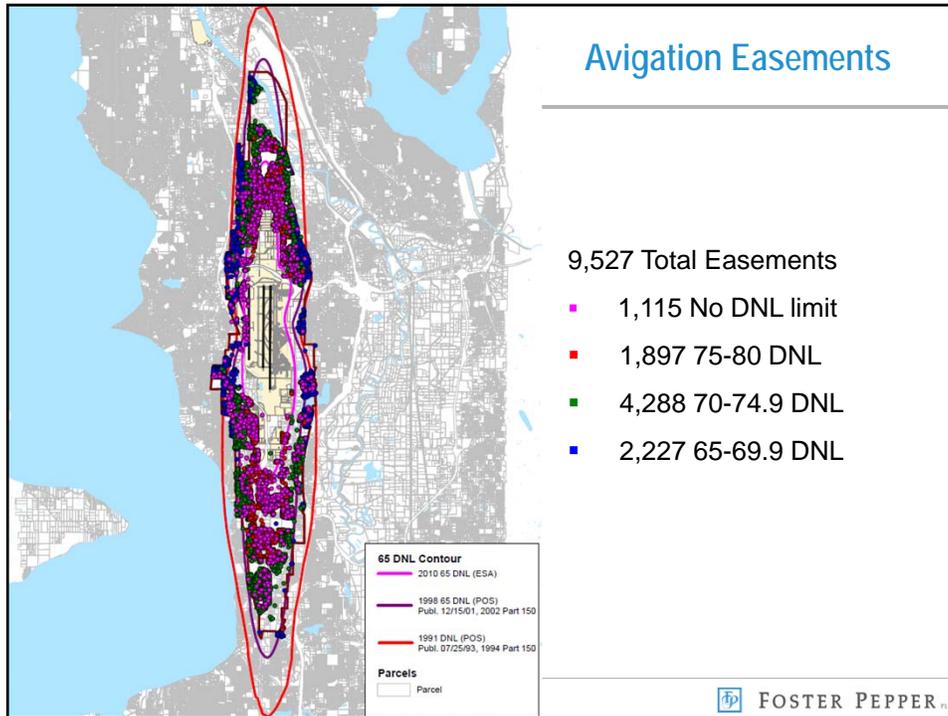
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## Port of Seattle Avigation Easements

- 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)

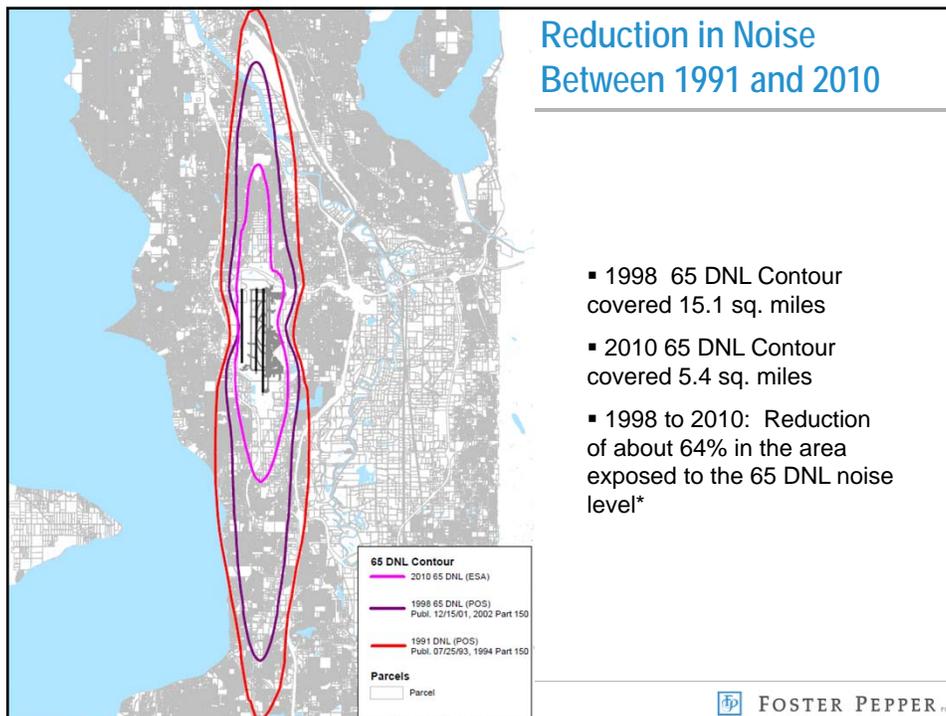
- Federal law limits liability for airport operators who publish notice of FAA-Approved Noise Exposure Maps (NEMs)
- Defense based on notice of noise environment around airport
- Claims for noise-based damages are barred unless the claimant can show:
  - Significant change in airport operations (increase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

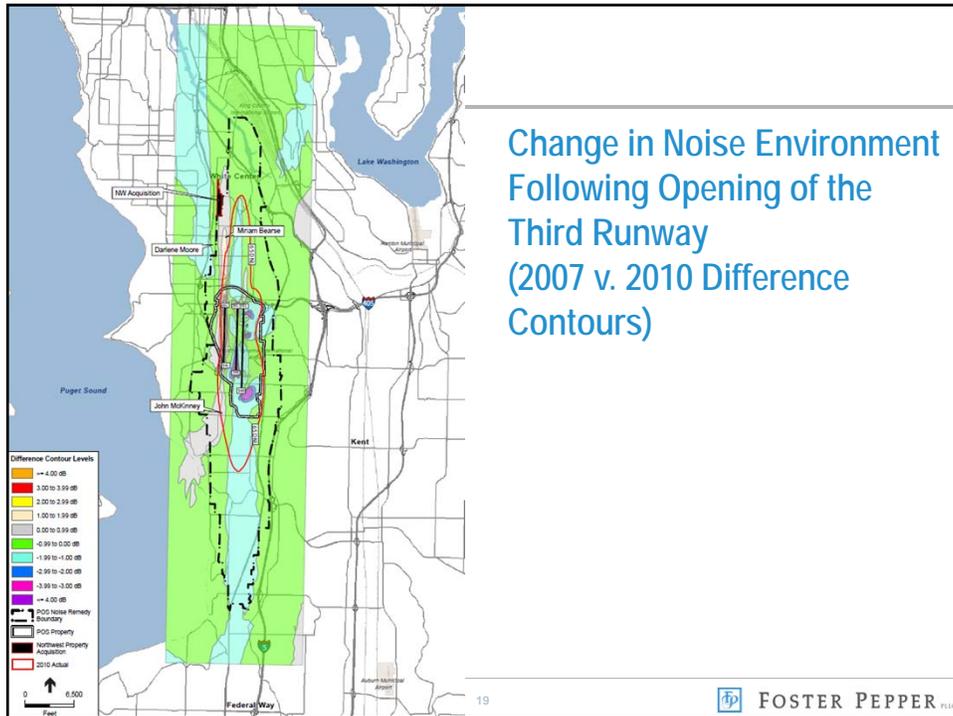
## Refuting Claims That Noise Has Increased

- 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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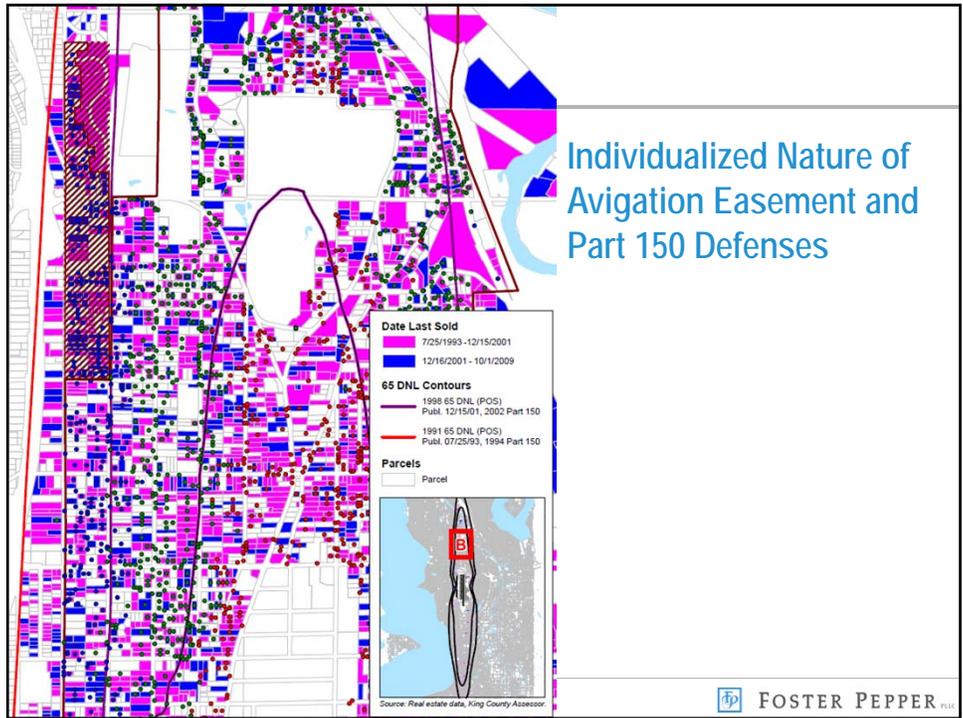
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## Using Noise Data to Defeat Class Actions

- 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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## Today's Presenters

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