



Airport Law Alert – D.C. Circuit Vacates FAA's NextGen Flight Tracks in Phoenix

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DC Circuit Finds FAA's Environmental Review and Implementation of RNAV Procedures Arbitrary and Capricious

On August 29, 2017, the United States Court of Appeals for the District of Columbia Circuit issued a groundbreaking opinion vacating Federal Aviation Administration (FAA) RNAV routes serving Sky Harbor International Airport in Phoenix, Arizona. The court agreed with the City of Phoenix that FAA violated the National Environmental Policy Act, National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act. The case is *City of Phoenix v. FAA* (D.C. Cir No. 15-1158) (August 28, 2017).

The opinion reflects the first time a court has struck down FAA NextGen airspace initiative flight procedures on environmental grounds. And, the decision contains important findings on issues with broader importance to airports nationwide, including:

- When the public can challenge FAA actions even though the normal 60-day clock for appellate review has expired. The court held that Phoenix was entitled to an exception to the normal rule under 49 U.S.C. 46110.
- When NEPA categorical exclusions are appropriate for airspace (and airport) actions.
- With whom FAA must consult with prior to making airspace decisions that have the potential to have noise effects on an airport or community.
- Whether FAA can justify using its uniform standard DNL 65 decibel threshold when assessing impacts to historic resources or parks.

Kaplan Kirsch & Rockwell represented the City of Phoenix in the litigation. For more information, please contact John Putnam or Peter Kirsch.