Safety and Security

Safety
We have advised numerous airports in preparing for the advent of Safety Management Systems (SMS) in compliance with SMS requirements and in commenting on proposed Federal Aviation Administration (FAA) regulations on the subject. We have assisted in completion of some of the earliest safety risk management processes for airports and have helped clients prepare for the need to revise leases, rules, minimum standards, and internal procedures to address SMS obligations.

We frequently advise airport clients on safety issues associated with protection of approach surfaces under FAR Part 77, from land acquisition to zoning and land use control and from litigation to protect critical approach surfaces to land use compatibility planning to ensure long-term approach protection.

Additionally, we advise clients on safety liability issues and the process for securing waivers or modifications to FAA safety requirements in areas such as airfield geometry, airfield weight limitations, aircraft size limitations, and related matters designed to ensure safe airport operations.

Security
We frequently assist airport proprietors in addressing their complex public safety and airport security imperatives. We are experts in drafting security regulations, developing improved security requirements, and revising airport rules, regulations, and minimum standards to address heightened security demands. Our team helps clients secure approvals for Transportation Security Administration (TSA)-mandated facilities and lease negotiations for required security functions. We also advise general aviation airports on their safety programs in light of on-again, off-again TSA interest in general aviation security.

Kaplan Kirsch & Rockwell assists commercial airports in negotiations and litigation against TSA over responsibility for security functions and has successfully coordinated litigation, administrative, and legislative efforts to ensure continued TSA funding for exit lane staffing. We have worked with airports to resolve TSA allegations of security violations and help general aviation airports develop meaningful security programs in this emerging but largely unregulated area. Because the funding of security apparatus and security facilities is a constant challenge, we often represent airports in negotiations with TSA regarding funding responsibilities. We have successfully worked with several clients to defeat proposals by TSA to shift both the funding and responsibility for exit lane security to airport proprietors.

Representative Cases
Town of Barnstable v. FAA, 659 F. 3d 28 (D.C. Cir. 2011) (successfully challenged FAA analysis of the safety implications of a new wind farm on general aviation operations off shore Cape Cod, Massachusetts)

Clark County v. FAA, 522 F. 3d 437 (D.C. Cir. 2008) (successfully challenged FAA determination under Part 77 that a new wind farm would not pose a hazard to aircraft taking off from a proposed new airport)

Tutor Saliba Corp. v. City of Hailey et al., 452 F. 3d 1055 (9th Cir. 2005) (upheld airport proprietor’s authority to restrict operations by overweight aircraft that could not safely be accommodated at the airport)
Representative Matters

- Represented a trade group in the Midwest on behalf of many airports in securing reversal of TSA policies that would have increased the proprietors’ law enforcement obligations in support of TSA functions.
- Represented several airports in the development of a successful strategy to defeat a TSA proposal to shift funding and responsibility for exit lane security from TSA to the airport proprietor.
- Represented a local government in negotiations for construction of a new in-line baggage facility and hardened baggage processing facility in compliance with the local building code and development standards.
- Advised a small Florida airport with significant flight training activity during the immediate aftermath of September 11 in the adoption of new security policies that were both respectful of First Amendment rights and responsive to demands for improved security.
- Represented a commercial service airport near New York City in development of a security program for its general aviation functions that addressed the proximity of high-risk targets in close proximity to the airport and balanced the differing security requirements for commercial and general aviation functions.
- Represented a small commercial airport in the Rocky Mountain region in evaluation of the possibility of opting-out of TSA screening and the liability and practical issues that the opt-out policies would create.
- Represented several of the largest hub airports in the world in commenting on, and preparing for, FAA’s proposed amendments to Part 139 to require airport-wide implementation of SMS. In connection with that effort, our team represented the proprietor of a small Part 139 airport that was a pilot facility for testing SMS implementation.
- Represented several resort community airports in assessing their respective safety obligations in accommodating aircraft that are either too large, too fast, or too heavy to be accommodated safely at the airport.