OVERVIEW

- Complex Interplay Among Many Laws
- Overlapping Areas of Authority
- Underlying Issues Require Balancing
  - National v. Local Interests
  - Aviation Users v. Airports v. Community v. FAA
  - How to Define a Noise Problem
- Changing Markets, Technology and Infrastructure Drives New Legal Issues
LEGAL RELATIONSHIPS

AERONAUTICAL USERS
- Airspace Control

FAA
- Federal Obligations (Grants, ANCA)

COMMUNITY
- Damages, Political Pressure, State Law
- Part 150

AIRPORT
- Proprietor’s Exception, Rates and Charges
SHARED RESPONSIBILITY FOR REGULATING NOISE

- **Courts**
  - Adjudicate Damages Claim and Other Disputes

- **Non-Proprietor State and Local Governments**
  - Land Use Beyond Airport Fence

- **Airport Proprietor/Sponsor**
  - Proprietary and Police Power to Control Access
  - Control of Expansion Plans

- **Federal Aviation Administration**
  - Control of Airspace and Aircraft Certification
  - Oversight of Proprietary Noise Measures
  - Fund Mitigation Measures
MEASURING NOISE

- Noise is “unwanted sound”
- Noise Metric Systems Help Define when Sound Becomes Noise
- FAA requires use of the A-Weighted Sound Level (dBA) in Decibels
- Decibel Scale Compresses wide range of sound pressures humans can detect to a smaller range
  - Decibel Scale is logarithmic
    - \( 60 \text{ dB} + 6 \text{ dB} \neq 120 \text{ dB} \)
    - \( 60 \text{ dB} + 60 \text{ dB} = 63 \text{ dB} \)
NOISE METRICS: DNL CONTOURS
NOISE METRICS: DNL CONTOURS

- FAA requires consideration of 65, 70 and 75 DNL
  - Airports often show 60 DNL
- Key purpose is identification of non-compatible land uses
SINGLE EVENT NOISE METRICS

- **Sound Exposure Level (SEL)**
  - Total Sound Energy of Single Overflight
  - A longer event may seem “noisier,” even if it has a lower or equal maximum level

- **Maximum Sound Level (Lmax)**
  - Maximum Decibel Level for Single Overflight
  
  Maximum is appx. 85 dBA
HOW MUCH NOISE IS TOO MUCH?

- FAA requires use of annual DNL metric for FAA purposes
  - Part 150, Part 161, Grant Compliance, NEPA
  - Other federal laws (NEPA) and agencies, and State and Local law, may permit other metrics

- FAA Noise Exposure Level Standard - DNL 65 dB
  - Some non-residential uses have higher standard - 14 C.F.R. 150, App. A, Table 1.
  - State and Local standards may be lower
AUTHORITY OF NON-PROPRIETOR LOCAL GOVERNMENT

- Land Use Control
  - New Airports
  - Expansion Beyond Fence
  - Non-Airport Uses Beyond Fence

- Preempted from
  - Restricting operation of aircraft - *City of Burbank v. Lockheed Air Terminal*
  - Regulating “routes, rates or service” - 49 U.S.C. § 41713
AUTHORITY OF AIRPORT PROPRIETOR

- Authority to adopt Access Restrictions - 49 USC 41713(b)
  - Must be reasonable, nonarbitrary and not unjustly discriminatory
  - FAA Oversight/Approval under ANCA and Grant Assurances
  - Authority To Decide Where and How to Expand
  - No Authority Over Flight Paths or Procedures

- Airline Use and Lease
AUTHORITY OF FAA

- Authority Over Flight Paths and Procedures
- Authority to Control Noise at Source
  - Aircraft Certification; Stage Classification
  - EPA has no regulatory authority
- Authority to allocate funds under the AIP and to authorize collection and use of PFCs
- Review and Approval of Access Restrictions
  - Including Non-Obligated Airports
LIABILITY FOR NOISE

- Takings, Nuisance, Trespass Theories
  - *U.S. v. Causby*, 328 U.S. 256 (1946): Established principle that takings can result from aircraft noise
  - *Griggs v. County of Alleghany, Pennsylvania*, 369 U.S. 84 (1962): Established principle that the airport proprietor is the entity responsible for any takings due to aircraft noise

- General Rule: Invasion of Super-Adjacent Airspace AND Substantial Interference With Use and Enjoyment of Property
  - Many variations among states
  - “Take or Damage” states
  - Degree of Interference is Key
LIABILITY FOR NOISE

Potential Defenses:
- State tort immunity act provisions
- State statute of limitations
- Varying state constitutional provisions relating to takings and damaging (including SOL)
- 49 U.S.C. §§ 47506-07 (Limitations on recovering damages for noise)
- Many Courts Ignore Avigation Easements
The Law of Airport Noise

Presented to: Patrick Wells
By: Date: October 16, 2017
Federal Aviation Regulations (FARs)
FAR Part 36 – Noise Standards, Aircraft type and Airworthiness Certification
FAR Part 91 – General Operating and Flight Rules
FAR Part 150 – Airport Noise Compatibility Planning
FAR Part 161 – Notice and Approval of Airport Noise and Access Restrictions
Other Laws
Airport Improvement Program (AIP) Grant Assurances
Surplus Property Act Deed Restrictions
State Laws and U.S. Constitution
National Environmental Policy Act (NEPA)
Noise Challenges and Path Forward
CURRENT ISSUES: NEXTGEN

- NextGen includes new GPS-based Arrival and Departures Procedures
- New Procedures often move flight paths from established patterns to new areas
- Enormous controversy and litigation
  - NorCal, SoCal, SEA, BWI …
- City of Phoenix Litigation
PHX V. HUERTA: D.C. CIRCUIT

- Not Metroplex procedures
- But Metroplex planned
- Categorical exclusion
**PHX V. HUERTA: PROCESS ISSUES**

- 49 U.S.C. §46110 60-day clock starts at time of route publication
- PHX reasonably waited to file
  - Narrow exception: FAA promised to address concerns
- FAA failed to adequately consult with City under:
  - NEPA
  - National Historic Preservation Act
  - Section 4(f)
PHX v. Huerta: Substantive Issues

- FAA unreasonably concluded a categorical exclusion was appropriate
  - 5 DB increase in 45-60 dB contours
  - Community concern
- FAA inappropriately applied DNL 65 standards under NHPA and Section 4(f)
  - Assumed Historic Districts and parks were “urban”
  - Required to consult with city
**PHX v. Huerta: Take Aways**

- FAA not invincible on noise
- FAA/ATO must do better involving airports and community
  - Accelerate ongoing FAA efforts
- Shortcuts in environmental documents are risky
- FAA cannot simply fall back on DNL 65 threshold
- Must “show its work” on Section 4(f)/106 resources
- CATEXes need to be better justified or EAs used if large noise changes (5 dB in DNL 45-60)
- Airport Staff needs to “report up”
CURRENT ISSUES: NOISE EFFECTS STUDY

- FAA Noise Effects Survey
- Series of Community Surveys to “update the scientific evidence on the relationship between aircraft noise exposure and its effects on communities around airports.”
- Could affect the 65 DNL compatibility standard
  - Implications for NEPA, Part 150, AIP/PFC Funding, Review of Local Restrictions
  - Watch if new data changes state liability laws
- Initial reports expected in near future
QUESTIONS?

Mort Ames
City of Chicago Law Department
312.744.6904
Mort.Ames@cityofchicago.org

Patrick J. Wells
Environmental Law Field Branch Manager, AGC-630
847.294.7311
Patrick.J.Wells@faa.gov

Eric Pilsk
Kaplan Kirsch & Rockwell LLP
202.955.5600
epilsk@kaplankirsch.com