

COMMENTS OF THE CITY OF SCOTTSDALE  
ON THE FEDERAL AVIATION ADMINISTRATION'S STEP 2 PROCESS  
FOLLOWING THE COURT'S DECISION  
IN CITY OF PHOENIX, ARIZONA V. HUERTA

The city of Scottsdale is submitting these comments to the Federal Aviation Administration (FAA) on behalf of its many citizens who are being seriously and adversely affected by unacceptable levels of aircraft noise. Noise from aircraft departing and arriving at Phoenix Sky Harbor Airport is adversely affecting the health and quality of life of the people living under these flight paths. The city has received numerous complaints from citizens. They complain about their inability to carry on conversations and to sleep without being interrupted by aircraft noise early in the morning and late at night. There is considerable concern about the impact of this noise on their health, safety and property values.

The city of Scottsdale is submitting these comments as part of the step two process following the court's decision in the case of City of Phoenix, Arizona v. Huerta, 869 F.3d 963 (D.C. Circuit 2017) which vacated the FAA's NextGen departure routes from Phoenix Sky Harbor Airport. The city is pleased that the FAA recognizes the importance of public input and asks that it give favorable consideration to these comments.

Scottsdale is located in the beautiful Sonoran Desert, nestled between Paradise Valley and the McDowell Mountains. Scottsdale elevation rises by nearly 4,000 feet from south to north.

Scottsdale is a premier community known for a high quality of life with attractive residential, business and shopping areas. It is an internationally recognized visitor destination and a thriving location for business. It consistently ranks among the nation's best places to live and has top-rated schools, award-winning parks, low crime, and a vibrant economy. It has been a quiet community that attracts many retirees. Old town Scottsdale is home to many restaurants, retail shops, art galleries, and hotels. Scottsdale's McDowell Sonoran preserve, to the city's north, is the largest municipally owned park or preserve in the country. There are recreational opportunities for everyone with many golf courses, tennis courts, parks, pools, bike paths and trails. 43% of Scottsdale land is open space. 47% is residential. The rest is mixed-use or commercial. In the past, 98% of the residents

of Scottsdale rated the city as a good or excellent place to live. 96% rated the quality of life as good or excellent.

All of this, however, is placed in jeopardy as a result of the noise created by the new aircraft overflights.

### **The problem**

For many years, planes flying east out of Sky Harbor Airport were widely dispersed so that the aircraft noise problem was minimized. At the end of 2014, with little notice and even less consultation, the FAA implemented new routes under the NextGen program. While NextGen no doubt provides many benefits, the impact in our area has been to move the flight paths down the middle of Scottsdale where aircraft are constantly flying over schools, hospitals, historical sites and residential communities. The more precise routes facilitated by NextGen technology mean that these noise sensitive areas are now constantly bombarded with aircraft noise.

The city urges the FAA to adjust these new routes for the following four reasons:

- The *process* by which they were adopted was improper:
- The new routes are *contrary to law*, arbitrary, and disproportionately impact Scottsdale vis-à-vis other communities in the area;
- The new routes endanger the *safety* of the citizens of Scottsdale; and
- The new routes increase aircraft *noise* to unacceptable levels.

### *Process*

The FAA published the new Sky Harbor Airport flight routes in the US terminal procedures publication. The terminal procedures publication is issued in 24 loose-leaf or bound volumes covering the United States, Puerto Rico and the Virgin Islands. While this publication may be well known within the FAA and air traffic control circles, it is little known within the aviation community and certainly completely unknown to the general public. By using this obscure document to publicize the new routes, the agency effectively kept the public in the dark. This made it impossible for the city of Scottsdale or its residents to submit views on the impact of the new routes even if they could have known what those impacts would be before the new routes were actually flown. And unlike Phoenix, where at least low-level officials were consulted before the new routes were put into effect, Scottsdale officials were not consulted at all. According to the FAA's own rules at the time the new routes were published (FAA Order 1050.1E), the agency should

have conducted an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA) before implementing the new routes. But Scottsdale residents could not request such an assessment for routes or actions that they did not even know about.<sup>1</sup>

Moreover, under Section 106 (16 U.S.C. § 470f) of the National Historic Preservation Act (NHPA) in effect at the time the new routes were first published, Federal agencies having direct or indirect jurisdiction over a proposed federal or federally assisted “undertaking” are supposed to consider the effects of the undertaking on historic properties or resources that are either eligible for listing or are listed on the National Register of Historic Places. Regulations have been issued that set forth this “Section 106 process” and explain how Federal agencies must take into account the effects of their actions on historic properties (16 U.S.C. § 470s). However, the FAA did not follow these regulations even though there are historic sites and national historic landmarks such as Taliesin West near the flight paths.

While we appreciate the fact that the FAA is holding public workshops and accepting comments, workshops do not provide the same opportunity as hearings for the public to be heard and there is no assurance that these written comments will be seriously considered by the FAA or that we will even receive an agency response.

*Contrary to Law*

In City of Phoenix v. Huerta, 689 F.3d 963 (D.C. Cir. 2017), the court held that, in issuing the NextGen flight routes from Phoenix Sky Harbor Airport, the FAA (1) did not properly consult with the City under the NHPA because it “consulted only low-level employees” without decisional authority, *id.* at 971, (2) did not properly notify citizens of the changing flight routes before they went into effect and therefore lacked a reasonable basis for issuing a categorical exclusion under NEPA on the mere assumption that the changes would not be highly controversial, *see id.* at 972–73, and (3) failed to follow its own regulations implementing the Transportation Act, which “require it to consult ‘all appropriate . . . State[] and local officials having jurisdiction over’” efforts to “preserve the natural beauty of

---

<sup>1</sup> See 36 C.F.R. § 800.5(a); *see also* Am. Bird Conservancy v. FCC, 516 F.3d 1027, 1035 (D.C. Cir. 2008) (“Interested persons cannot request an [environmental assessment] for actions they do not know about, much less for actions already completed.”).

... public park and recreation lands . . . and historic sites.” Id. at 973 (quoting 49 U.S.C. § 303(a) and FAA Order 1050.1E, ¶6.2e). The court accordingly “vacate[d]” the FAA order “implementing the new flight routes and procedures” at Phoenix Sky Harbor Airport.

Following the court’s decision in City of Phoenix v. Huerta, the FAA sought to limit the decision and remedy to only the westbound routes over Phoenix. It asked the court to amend and replace Section IV of its opinion and order of August 29th with the following text:

“For the foregoing reasons, we grant the petitions and remand to the FAA, without vacating, the portion of the September 18, 2014 order implementing the MAYSA, LALUZ, SNOBL, YOTES, BNYRD, FTHLS, IZZZO, JUDTH, and KATMN procedures at Phoenix Sky Harbor International Airport departing Runways 25L, 25R or Runway 26 for further proceedings consistent with this opinion and the Memorandum filed with this Court on November 30, 2017. This Court will stay the issuance of its mandate until June 15, 2018, unless the parties notify this Court prior to that date that the mandate should issue. The parties may each file a status report of no more than 2,500 words on or before May 15, 2018, in the event the mandate has not yet issued.”

The court’s amended decision did not implement the FAA’s request expressly to limit the vacatur order to the westerly departure routes. Instead, the court amended its opinion by inserting the word “departure” before the word “routes” and deleting the words “and procedures” so that the decision now reads as follows:

“...vacate the September 18, 2014 order implementing the new flight departure routes at Sky Harbor International Airport, and remand the matter to the FAA for further proceedings...”

The new language expressly vacates the FAA’s new departure routes, without distinguishing between eastbound and westbound routes. Rather than following this order, the FAA has suggested that the D.C. Circuit adopted its proposed limitation to vacate only the westbound departure routes, and thus modification of other departure routes is left solely to the FAA’s discretion. Given that the order draws no distinction between eastbound and westbound routes, the FAA’s view is arbitrary and capricious and not in accordance with law.

To comply with the court's order, FAA must adopt new eastbound departure routes that treat citizens that live to the east of the airport the same as those who live to the west of the airport. As detailed above, all of the procedural errors identified by the court in the FAA's implementation of the NextGen program under NEPA, the NHPA, and the Transportation Act with respect to Phoenix are equally true with respect to Scottsdale. Indeed, Scottsdale was not provided even the limited outreach afforded to Phoenix, and found deficient by the court. Therefore, to comply with the court's order vacating all departure routes based on FAA's failures to comply with federal law, the people of Scottsdale should also get noise relief just as the people in Phoenix did. To do otherwise is not only unfair, but also arbitrary and capricious and not in accordance with law.

### *Safety*

As noted above, flights departing to the east of the airport are now concentrated over homes, schools and hospitals in the populated areas of Scottsdale rather than over mountains and rivers. It is well known that takeoffs and landings are the most dangerous phases of the flight. Aircraft now fly over densely populated areas of Scottsdale during these two most dangerous phases of flight. More than half of all fatal accidents occur in the first and last fractions of a journey, according to aircraft manufacturer Boeing. The annual Boeing Statistical Summary of Commercial Jet Airplane Accidents Worldwide Operations 1959 – 2016 found that for the period 2007 through 2016, 24 percent of all fatal accidents occur on the final approach to land while another 24 percent are in the landing. Eighteen percent occur during the take-off or climb. If an accident should occur during a takeoff or arrival to the east of the airport, it would be a major disaster for the many people in Scottsdale who are now living under the flight path.

At many urban airports, there may be no way to avoid flying over heavily populated areas regardless of which direction the aircraft are directed to take off or land. But where, as here, there are less populated areas that aircraft could fly over, it makes sense from a safety standpoint for the FAA to choose that less populated path rather than making aircraft fly over the more populated areas.

### *Noise*

Aircraft noise is now impacting all of Scottsdale. However, North Scottsdale has been particularly hard hit. As charts presented by the FAA at the recent workshops demonstrate, a disproportionate number of the noise complaints come from citizens living in North Scottsdale. This is not surprising. Most of North Scottsdale is

designated by Ordinance as environmentally sensitive lands and Scottsdale citizens generally are very protective of the natural character of the desert and rural areas. Scottsdale has imposed significant height restrictions, use restrictions, and building restrictions to protect the local environment. People have moved to this area because they have sought the natural quiet that can be found here. Many people were in fact aware of the local airport and made a point of choosing a neighborhood to live in that was not underneath the flight paths.

Unfortunately, the recent changes in flight routes have moved air traffic over homes where there was little or no such traffic before. This has disrupted their lives and ruined their plans to enjoy the natural quiet of this area. This is not a case of people moving near an airport and then complaining about the noise. Rather, in this instance, the aircraft noise has been moved by the FAA to areas where there was little or no such noise before. An occasional flight overhead might not be a significant problem. However, the accuracy of NextGen technology and implementation concentrates the noise in a small area. Aircraft now fly right up the middle of Scottsdale over the most densely populated areas one after the other following precisely the same flight path. Residents in these areas are experiencing a constant and significant increase in their historic noise levels.

Scottsdale recognizes that NextGen may provide many efficiency benefits for the airlines. But this must be balanced against the environmental degradation experienced by the people on the ground underneath the flight paths. The precision of NextGen technology concentrates the flights and resulting noise over a much smaller area. The FAA's traditional noise threshold of 65 DNL does not fully capture the impact of the noise along these air routes and is a poor indicator of the actual annoyance. Residents in these areas are experiencing substantial increases over their historic noise levels due to the much higher frequency of flights over a much more concentrated area. And unfortunately, this area is now concentrated right over the populated areas of Scottsdale. It is no consolation for people whose lives are constantly disrupted by aircraft noise that it is not a significant impact under some arbitrary FAA noise threshold.

In fact, the problem is exacerbated by the geography and terrain of the local area. As an aircraft flies north through Scottsdale the terrain rises. So even though residents in the northern portion of Scottsdale may be further away from the airport and the aircraft may have climbed to a higher barometric altitude, the planes are still relatively close to the ground because of the higher elevation of the land.

Moreover, the nearby mountains and rocky landscape tends to magnify the noise especially in an area like the northern portions of Scottsdale where you do not find the higher ambient noise levels common in a more urban setting. And the problem is only going to get worse. Passenger traffic has increased 19% at Phoenix Sky Harbor Airport since the great recession. It is expected to grow 61% between now and 2045.<sup>2</sup>

For all these reasons, the aircraft noise issue has become intolerable and the citizens of Scottsdale cry out for some relief.

While the FAA may argue that many of these issues should have been raised shortly after the publication of the new routes, the absence of any real notice and opportunity to comment and the severe safety and environmental impacts that have resulted warrant a fresh look by your agency now that the D.C. Circuit has vacated all departure routes from Phoenix Sky Harbor Airport. At any rate, Scottsdale's requested air route modification is consistent with the FAA's Step Two commitment to consider comments regarding all air routes from Phoenix Sky Harbor Airport—not just the westerly departure routes—and thereby initiate a separate federal action subject to all applicable statutory and regulatory requirements. Failure to complete this federal action consistent with legal requirements is subject to further challenge in court.

Moreover, there are in fact solutions to these problems that could be implemented without seriously undermining the benefits of NextGen or redistributing the noise to other population centers.

## **The Solution**

In many areas of the country, it may be difficult to solve one community's noise problem without creating the same problem for another community. However, here, in the West, with its large tracks of relatively unpopulated land, that is not necessarily the case. Accordingly, the city has retained JDA Aviation Technology Solutions (JDA) and asked them to develop a solution that would provide noise relief to the citizens of Scottsdale, reduce the number of noise impacted citizens overall and still be safe from an air traffic control perspective. As you know, JDA has staff and consultants with a wealth of noise, airport, and air traffic control expertise.<sup>3</sup> Many of them are former FAA employees. Based on their expertise, we

---

<sup>2</sup> See Table S-1 on page 6 of the FAA's Terminal Area Forecast Summary: Fiscal Years 2018 to 2045.

<sup>3</sup> See JDA Aviation Technology Solutions "Scottsdale Community Phoenix Sky Harbor International Airport Departure Procedure Study" [hereinafter JDA Study] at pages 12 and 13.

would urge the FAA to adopt the new departure procedures set forth in their submission [copy attached] and described below.

### *Current situation*

Currently, aircraft departing to the east from the Phoenix airport going to the ZEPER, QUAKY, and MIRBL waypoints take almost an immediate sharp left turn and proceed north over the GOALY and GOLDR waypoints right through the middle of Scottsdale and over its most noise sensitive areas. According to JDA, these 3 flightpaths have the following adverse noise impacts:

- The MIRBL procedure adversely impacts 64,427 people, including 26,370 in Scottsdale;
- The QUAKY procedure adversely impacts 76,794 people, including 33,063 in Scottsdale; and
- The ZEPER procedure adversely impacts 82,259 people, including 37,754 in Scottsdale.

### *FAA Concept 1*

The FAA, to its credit, at the recent workshops, proposed an alternative that it called Concept 1. The FAA stated that Concept 1 would supplement existing east flow northbound procedures. Under this concept, some aircraft departing to the east would take a more gradual left turn and head northeast over the Salt River and then turn north over the McDowell Mountain Regional Park and the GEENO waypoint on their way to the MRBIL waypoint. This would take the aircraft slightly to the east of Scottsdale. As a result, the houses and people in Scottsdale impacted by aircraft noise would be reduced. The problem is, by the FAA's own admission, only about 30% of the aircraft departing to the east would take this route. The other 70% would continue to go right up the middle of Scottsdale and its noise sensitive areas.

### *Acceptable Modification to FAA Concept 1*

While the FAA Concept 1 is a step in the right direction, it does not provide sufficient noise relief for the citizens of Scottsdale. FAA's Concept 1 could be improved if those aircraft heading for QUAKY also turned northeast over the Salt River, proceeded over the McDowell Mountain Regional Park and did not head towards QUAKY until they had passed the GEENO waypoint. This would mean



that an additional 30% of air traffic could be passing to the east of Scottsdale. With this modification, Scottsdale could find FAA's Concept 1 acceptable.

*Preferred Modification to FAA Concept 1*

Scottsdale very much appreciates FAA's initiative in proposing its Concept 1. But even with the modification described above, it does not go far enough to reduce the harmful impacts of aircraft noise. In our view, the best solution would be to further modify Concept 1 by directing all aircraft taking off to the east to fly further to the northeast past the DERVL waypoint and turn north toward ESDEE on their way to MRBIL and QUAKY. In this way, the aircraft would completely bypass Scottsdale and many of its neighboring communities including the Yavapai Nation Reservation. This would take the aircraft over the least populated areas and would therefore provide the maximum noise and safety benefits.<sup>4</sup> Many of the people and houses that would still be impacted would be those near the east end of the airport who will be impacted regardless of which departure procedure is chosen.

Both this preferred modification and the acceptable modification described above would also be safe and consistent with FAA's Concept 2 governing arrival routes into Phoenix.<sup>5</sup> And Scottsdale would still be sharing a fair portion of the burden as a result of the flights to ZEPER, the Deer Park and Scottsdale airports, and military traffic.

We recognize that our preferred modification might increase flight times by a few minutes. This must be balanced against the resulting improvements in the noise environment for the people in and around Scottsdale and is a small price to pay to reduce the noise, environmental, and cultural impacts that are imposed by the current situation. Airlines benefit greatly from the passengers in the Phoenix/Scottsdale area and the extra few minutes of flight time is a small imposition that they should be willing to share in order to improve the quality of the lives of the citizens in the communities they serve.

It has long been national policy to promote an environment for all Americans free from noise that jeopardizes their health or welfare.<sup>6</sup> This routing far to the east of Scottsdale is most consistent with that national policy and we urge the FAA to adopt it. If FAA intends to insist on the capacity benefits that it would derive from

---

<sup>4</sup> See JDA Study pages 27, 28 and 30

<sup>5</sup> See JDA Study pages 28 and 29

<sup>6</sup> 42 U.S. Code § 4901, (Pub. L. 92-574, § 2, Oct. 27, 1972, 86 Stat. 1234.)

its Concept 2 for arrivals, then Scottsdale believes that the only acceptable option for departures is its preferred modification described here.